THE

BENGAL TENANCY ACT:

ACT VIII. OF 1885.

WITH COPIOUS NOTES OF
DECIDED CASES UNDER THE OLD LAW,
EXTRACTS FROM OFFICIAL PAPERS,
DEBATES IN THE LEGISLATIVE COUNCIL, &c.
WITH AN APPENDIX CONTAINING THE REPORT OF THE SELECT COMMITTEE, AND THE SECTIONS OF THE IRISH LAND LAW RELATING TO COMPENSATION FOR DISTURBANCE,
AND A FULL INDEX.

BY

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ERRATA.

Page 1 Note, omit the word "probably."

„ 2 Omit (b) in the text after "sub-section 3, section I.," and insert it after "section 3."

„ 4 Note, under sub-section 18, 7th line, for "in which" read "in which case."

„ 9 Note, 18th line, for "the other cases" read "other cases."

„ 14 Note, 2nd para. last line, for "sub-section 7" read "sub-section 10"; 5th para. "mode or prescription" read "mode of prescription."

„ 15 Notes, 2nd para. 1st line, after "Secretary of State" add "for India."

„ 16 3rd para. for "transferror" read "transferor."

„ 18 Note, Moya Misser *v.* Rafikun, read Noyna Misser *v.* Rafikun.

„ 22 2nd para. "rent of rent" read "rate of rent."

„ 25 Note, under section 35, 7th line, after "Huro Prosad Roy Chowdry *v.* Chundy Churn Boyragee," read "I. L. R., 9 Cal. 505."

„ 31 Note, after Rupchand Chango omit "Roy."

„ 35 Note 3rd para. 1st line, after "predecessor" add "in interest."

„ 39 Note to section 56, 8th line, for "dated" read "dates."

„ 40 Section 57, 2nd line, for "baen" read "been."

„ 42 Note, for "which contain," read "which contains."

„ 49 section 74 "for mahtut" read "or mahtut."

„ 63 Note, 8th line for "he will be entitled to sue to enhance without making his co-sharers parties," read "he will not be entitled to sue. to enhance," &c.

„ 63 Ibid, 11th line, for "so would an Ijardar of a definite share" read "neither would an Ijardar of a definite share be so entitled."

„ 63 Ibid, 15th line, for "one co-sharer" read "some co-sharers."

„ 64 Note, 2nd para. after "Secretary of State" add "for India."

„ 69 Note, after "draft record" add "or record."

„ 69 Note, last line for "Hon'ble Rao Saheb Vishranath Narayan Mandle" read "Hon'ble Rao Saheb Vishranath Narayan Mandlik."

„ 72 section 121 for "therefore" read "therefor."

„ 85 Note, last but three lines, for "J. L. R." read "I. L. R."; last but two lines, for "jurisdection" read "jurisdiction," last but one line for "wronghy" read "wrongly"; last line, for "materially" read "material."

„ 97 Margin of section 170, for "tenure of holding" read "tenure or holding."

„ 104 For "Adaita Churn Dey *v.* Petumber Doss" read "Adaita Churn Dey *v.* Peter Doss."

„ 104 Note, last line, for "Ramahun Khan" read "Ram Dhun Khan."

„ 120 5th para. 2nd line, for "Tunkulla Sirkar" read "Sarikulla Sircar."

„ 120 6th para. after "Nagu" read "v" for "z."

THE BENGAL TENANCY ACT.

AN ACT to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

Received the assent of His Excellency the Governor-General on 14th March 1885.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; it is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title. 1. *(1)* This Act may be called the Bengal Tenancy Act, 1885.

Commencement. *(2)* It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, appoint in this behalf.*

Local extent. *(3)* It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third part of the First Schedule of the Scheduled Districts

* Probably 1st November 1885.

XIV. of 1874. Act, 1874; *(a)* and the Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof *(b)*.

Repeal.

2. *(1)* The enactments specified in Schedule I. hereto annexed are repealed in the territories to which this Act extends by its own operation.

(2) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

(3) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(4) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government khás maháls and revenue-free lands not entered in any register:

The Government Khás Maháls referred to here are evidently those which are permanently settled. Temporarily settled estates are exempted from the operation of the enhancement clauses of the Act by section 191.

(2) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

(a) I. The Jalpaigori and Darjeeling Divisions.
II. The Hill Tracts of Chittagong.
III. The Sonthál Paraganas
IV. The Chutia Nagpur Division.
V. The Mahals of Angal and Banki.

(b) It appears, from the debate which followed the motion of the Hon'ble the Moharajah of Durbhanga, that the question whether the Act should apply to lands other than those used for agricultural or horticultural purposes, is left to the determination of the Court in each case as it arises. Act X. of 1859 and Act VIII. of 1869 B. C. both applied to land the subject of agricultural or horticultural use alone.

(3) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

(4) "Landlord" means a person immediately under whom a tenant holds, and includes the Government.

(5) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant :

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII. and Schedule III. of this Act, "rent" includes also money recoverable under any enactment for the time being in force, as it was rent.

(6) "Pay," "payable," and "payment," used with reference to rent, include "deliver," "deliverable," and "delivery."

(7) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

(8) "Permanent tenure" means a tenure which is heritable, and which is not held for a limited time.

(9) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.

(10) "Village" means an area included in a village map of the revenue-survey within the same exterior boundary, or where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

(11) "Agricultural year" means where the Bengali year prevails, the year commencing on the first day of Bysák ; where the Faslí or Amlí year prevails, the year commencing on the first day of Asin ; and, where any other year prevails for agricultural purposes, that year.

(12) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihár and Orissa, made in the year 1793.

(13) "Succession" includes both intestate and testamentary succession.

(14) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the persons referred to.

(15) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

(16) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

(17) "Revenue-officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

(18) "Registered" means registered under any Act for the time being in force for the registration of documents.

The word "land" is nowhere defined in the Act. In the statement of objects and reasons attached to the Bill of 1883, it was observed "The term raiyat has, following the Bill prepared by the Rent Law Commission, been limited to tenants holding land for purposes of agriculture, horticulture or pasture, or who have come into possession for such purposes, except where *bastu* or homestead land is included in a raiyat's agricultural holding in which it will be treated in the same way as the rest of the holding, and he will be deemed to hold it as a raiyat."

Under the former law, it has been held that a suit cannot be entertained at enhanced rates of land not used for agricultural or horticultural purposes.

Madan Mohun Biswas *v.* Stalkart, where the land was situated in a town, 9 B. L. R. 97.

Rani Durga Sandari *v.* Bebi Umdatnissa (Couch, C. J., Bayley, and Ainslie; J.J.) 9 B. L. R. 101, where the land was covered by buildings.

Kali Kissen Biswas *v.* Sreemutty Janki, 8 W. R. 250,

Kaly Mohun Chatterjee *v.* Kali Kissen Roy Chowdry, 2 B. L. R. App. 39.

Khairuddin Ahmud *v.* Abdul Baki, 9 B. L. R. 103, footnote.

Ramdhan Khan *v.* Haradhun Poramanic, 9 B. L. R. 107 foot note, where it seems to have been held that Act X. of 1859 does not apply to land let for dwelling purposes.

CHAPTER II.

CLASSES OF TENANTS.

4. There shall be, for the purposes of this Act, the following classes of tenants, namely:—

(1) tenure-holders, including under-tenure-holders,

(2) raiyats, and

(3) under-raiyats, that is, say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats, namely:—

(*a*) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,

(*b*) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(*c*) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

Meaning of "tenure-holder" and "raiyat."

5. *(1)* "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat the Court shall have regard to—

(*a*) local custom; and

(*b*) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard bighás, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

The question as to who should be considered tenure-holders, and who raiyats will be one of the most important questions likely to arise under the Act. It will be observed that the language of Section 5, Sub-section I., confines the definition to holders of lands which are originally leased, not for cultivation by the lessee, but for cultivation by tenants and collection of rents from them.

Where the size of the holding is 100 bighas—a rebuttable presumption arises that it is a tenure.

The reader will mark the importance of the distinction between *tenures and raiyatti holdings.* "Turning to the case law we find it decided (1) that if a person takes land, and at once sublets it, he will be a middle man, and will not under the present law acquire a right of occupancy in such land, (2) that if a ryot who has acquired a right of occupancy in land sublets such land, he does not by so doing forfeit his right of occupancy, but (3) he cannot by so doing alter the nature of his holding, and convert it into an under-tenure." Report of the Rent Commission, Vol. I. p. 9.

In cases where land is let by lease, and the language of the lease is clear as to the character of the holding, there will of course be no difficulty; as regards the other cases, the question of the intention of the parties will have to be decided from the surrounding circumstances.

The following kinds of tenures are met with in different parts of Bengal and Behar:—

Amongst those intermediate between zemindars and cultivators may be mentioned:

Thika or *Mustagiri* leases of Behar or Ijara leases of Bengal which are farming leases of the whole or portions of an estate.

Zarpeshgi is a similar lease granted in consideration of an advance paid by the lessee to the lessor, in which the latter's right of re-entry is contingent on the repayment of the advance.

Kutkina is a sublease from a *Thikadar.*

Darkutkina is a sublease from a *Kutkinadar.*

Satua Patúa or *Soodbhurna* is an usufructuary lease which provides for the payment of principal and interest, but sometimes of the interest alone from the usufruct of the land.

Theka, Zarpeshgi, Kutkina, Darkutkina, and Satua Patua leases are peculiar to the Behar Districts.

Patni, Darpatni, Sepatni, and *Chahar Patni* tenures are generally found in Bengal.

Istmarari tenures are tenures held in perpetuity from generation to generation, but not necessarily at fixed rents.

Mákárári tenures are tenures with fixed rent, but not necessarily hereditary.

Istmari Makarari tenures import both fixity of rent and perpetuity.

Ghatwali tenures prevail in Northern and Western Bengal and *Jotedari* tenures in Rangpur.

In Bakergunge we have no less than nineteen kinds of intermediate tenures, the principal of which are:—

(1.) *Ausat Taluk.*
(2.) *Nim Ausat Taluk.*
(3.) *Nim Taluk.*
(4.) *Ausat Howala.*
(5.) *Nim Ausat Howala.*

(6). *Nim Ausat Nim Howala.*
(7.) *Zimma.*
(8.) *Mashakhasi.*
(9.) *Mirash* which may be either an intermediate or a cultivating tenure.
(10.) *Dar Mirash.*

Amongst cultivating tenures may be mentioned.

Khapdari tenures of north Bhaugulpur and *Gorabundie* tenures of the same district.

Gachbandi tenures of North Purnea.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held; or,

(b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Uniform payment of rent for twenty years creates a rebuttable presumption that a tenure has been held at such rent, from the time of the Permanent Settlement, and that its rent is non-enhancible. Clauses (*a*) and (*b*) are evidently borrowed from Section 51, clause I., Regulation VIII. of 1793, which runs as follows:—

"No zemindar or other actual proprietor of land shall demand an increase from the Taluqdars dependent on him, although he should himself be subject to the payment of an increase of *jumma* to Government, except upon proof that he is entitled so to do either by the special custom of the district or by the conditions under which the Taluqdar holds his tenure, or that the Taluqdar by receiving abatements from his jumma has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it."

A notice of enhancement on a dependent Taluqdar must contain grounds mentioned in Section 51, Regulation VIII. of 1793, and not those in Section 17, Act X. of 1879.

Huronath Roy *v.* Bindoo Bashiny.
Debia III W. R. Act X. p. 26.
Kali Nath Chowdry *v.* Humi Beebi XII. W. R. p. 506.
Kristo Chunder Gupto *v.* Elahi Buksh, 20 W. R. p. 458.

In Dhunput Singh's case, 9 W. R. P. C. p. 3 and 11 M. J. A. p. 265. The Privy Council observe, "But if the respondents were tenants intermediate between the proprietor and the ryot, that fact seems to raise objections both of form and substance fatal to the maintenance of the present suit."

Limits of enhancement of rent of tenures.

7. *(1)* Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

Enhancement of rent.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

(*a*) the circumstances under which the tenure was created, for instance, whether the land comprised in tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(*b*) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

SECTION 7. SUB-SECTION I. In Sarodasoondory Dabée *v.* Golam Aly, 19 W. R. 142, the Privy Council observe, speaking of the holder of a dependent Taluq, "if liable to enhancement at all, his rent could only be enhanced according to the pergunah rate of the rents payable by similar holders."

SUB-SECTION 3. This is a new provision, supposing that a portion of the tenure originally let to tenants reverts to the direct possession of the tenure-holder, the rent payable for such portion is to be taken into account. Again, if any portion is waste or covered by forest, and yields a small return—will the Court take into consideration, in addition to this return, the rent for such land "payable" by tenants? It seems it should. The principle that tenure-holders are entitled

to a deduction for expenses of collection was recognized in Bamasoondoree *v.* Radhika Chowdrani I. W. R. 339, but no definite rule was laid down. Section 8, Reg. V. of 1812, enacted—

"In the case of a dependent taluqdar, if the rent of the lands be computed according to the rates payable by ryots or cultivators for land of a similar quality and description, a deduction shall be allowed from the gross rent, in the adjustment of the jumma of such dependent taluq, at the rate of ten per cent. for the taluqdar's profit or income, over and above a reasonable allowance for charges of collection according to the extent of the taluq."

Power to order gradual enhancement.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five until the limit of the enhancement allowed has been reached.

Rent once enhanced may not be altered for fifteen years.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

The fifteen years are to run from the first year from which the enhanced rent is ordered to be paid. The words are, "the date on which it has been so enhanced," and not the date on which the liability to enhancement is declared by the court.

Other incidents of tenures.

Permanent tenure-holder not liable to ejectment.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

For definition of "permanent tenure" see Sub-Section 8 Section 3. It is a tenure "heritable and not limited to time." It appears from Explanation III., Art 18 of the Digest by Mr. Justice Field that the word "permanent" is used as the English equivalent of "Istmurari" which indicates permanence of the tenure as to time, whereas makarari would seem to indicate permanence as regards the rent payable. The reader will observe that both permanent tenure-holders and rayats holding at a rent or rate of rent fixed in perpetuity are clothed with the power of transfer and bequest like owners of other immoveable property, therefore though transferability as an incident of occupancy rights has not been sanctioned, practically it has been conceded with regard to those occupancy holdings, the rents of which have not been changed for twenty years, and of which the landlord cannot prove a later origin.

In Raja Lelanund Singh Bahadur *v.* Thakur Munrunjon Singh, 13 B. L. R. p. 133, the Privy Council observe: "The words *Makarari Istmurari* are used, and although it may be doubtful whether they mean permanent during the life of the person to whom they are granted, or permanent as regards hereditary descent, their lordships are of opinion that coupling these words with the usage, the tenures were hereditary."

In Bilasmoni Dasi *v.* Sheo Prosad Singh, 11 C. L. R. p. 219, the Privy Council remark:—"Their Lordships were referred by the learned Counsel for the respondent to several cases in the late Sudder Court,

in which it was ruled that a lease at a fixed rent without more, did not import perpetuity, and that to create a perpetual lease, the addition of the words 'from generation to generation,' or other words importing perpetuity, were necessary. On the other hand, it was held by the High Court at Calcutta, in a case of a Ghatwali tenure, where the words *Makarari Istmurari* were used, that the holding was perpetual. But this Committee, on an appeal from that decision, held that these words might mean either permanent during the life of the person to whom the grant was made, or permanent as regards hereditary descent (13 B. L. R. 133). In the present case, the word "Istmurari" is not used, the instrument is called the "Mokurari Ijara" Pottah. And their Lordships, in the case of the Bengal Government *v.* Nawab Jaffer Hossenkhan (5 Moore I. A. 498) stated their opinion to be that though Mokurari might import perpetuity, that was not the necessary meaning of the word. The question then is, whether the intention of the parties is shewn, by the other terms of the instrument, the circumstances under which it was made, or the subsequent conduct of the parties, with sufficient certainty to enable the Courts in the absence of words importing perpetuity to pronounce that the grant was perpetual." See Ameeroonessa *v.* Moharaja Hetnarain Singh, S. D. A. 1853, 648. Sarobor Singh *v.* Mohendro Narain Singh, S. D. A. 1860, 577. Mode Narain Singh *v.* Kant Lal S. D. A. 1859, 1572. Mussamat Lakhu Konwar *v.* Roy Harekreshna Singh, 3 B. L. R. 226. Karuna Kor Mahte *v.* Niladhro Chowdhry, 5 B. L. R. 652.

"Absence of words importing the hereditary character of the tenure may be supplied by evidence of long and uninterrupted enjoyment, and of the descent of the tenure from father to son." Gopal Lal Thakoor *v.* Tilluck Chunder Rai 10 Moore I. A. 191, Satya Sharun Ghosal *v.* Mahesh Chunder Mitter 2 B. L. R. P. C. 27. Baboo Dhanput Singh *v.* Gooman Singh, 11 Moore I. A. 433. Joba Singh, 4 S. D. A. 271.

Transfer and transmission of permanent tenure.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

"Subject to the provisions of the Act," *i. e.* the conditions laid down in sections 12 and 15 as regards private transfer and bequest, and sections 13 and 14 as regards involuntary transfer by sale in execution of decrees. The word "bequeathed" would seem to include devolution by succession intestate.

Voluntary transfer of permanent tenure.

12. (*1*) A transfer of a permanent tenure by sale, gift, or mortgage (other than a transfer by sale in execution of a decree, or by summary sale under any law relating to patní or other tenures) can be made only by a registered instrument.

(*2*) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift, or mortgage, a permanent tenure, unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:—

(*a*) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees, and

(*b*) when rent is not payable in respect of the tenure, a fee of two rupees.

(*3*) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

13. (*1*) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, require the purchaser to pay into Court the landlord's fee prescribed by the last foregoing section, and such further fee for service of notice of the sale on the landlord as may be prescribed.

(*2*) When the sale has been confirmed, the Court shall send to the Collector the landlord's fee and a notice of the sale in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree for rent.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

Succession to permanent tenure.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

SECTION 12, Cl. 3. During the debate on the Bill in Council, on the motion of the Hon'ble the Maharaja of Durbhanga that the landlord may within 60 days notify that the transfer was against custom or contract, it was pointed out by the Hon'ble Sir Steuart Bayley that "the registration which the Bill promoted was the registration of documents and not the registration of tenures; a registered document did not have the same validity in any way. If the tenure was valid, well and good, if it was invalid, the registration could not make it valid, consequently whatever remedy the landlord may have without this Section, he had now."

SECTIONS 12 TO 15 are amplifications of the provisions of Section 26, Act VIII. (B. C.) of 1869, which ran as follows :—"All dependent talookdars and other persons possessing a permanent transferable interest intermediate between the zemindar and the cultivator, are required to register in the Sheristah of the zemindar or superior tenant to whom the rents of their talooks or tenures are payable, all transfers of such taluqs or tenures or portions of these by sale, gift or otherwise, as well as all succession thereto and divisions among heirs in cases of inheritance."

It will be observed that the words in the former law were "permanent transferable interest;" it was left to the courts to determine what tenures were transferable, the present law declares what tenures are so.

Bar to recovery of rent pending notice of succession.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

Transfer of and succession to, share in permanent tenure.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

Ryots who hold at fixed rates of rent which have not been changed from the time of the Permanent Settlement are not liable to enhancement even at the suit of auction purchasers under Act XI. of 1859, Hurjhur Mookerjee *v.* Puddolochon Dey, 7 W. R. 176.

CHAPTER V.

OCCUPANCY RAIYATS.

General.

Continuance of existing occupancy rights.

19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

Upon obvious juridical principles, those who have been already vested with rights of occupancy, *i. e.* non-resident tenants, would not be divested by the Act

Definition of "settled raiyat."

20. *(1)* Every person who for a period of twelve years whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

(2) A person shall be deemed for the purposes of this section to have continuously held land in a village, notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(4) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(6) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat, notwithstanding his having been out of possession more than a year.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

Settled raiyat to have occupancy-rights.

21. (*1*) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

(*2*) Every person who being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March 1883 and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

SECTIONS 20 and 21 embody the most sweeping change in the former law. Twelve years' continuous possession of a piece of land was a condition precedent to the accrual of a right of occupancy, so that it was an incident of land; these sections make it an incident of status; every "settled rayat" gets the right the moment he occupies land as a tenant.

A raiyat who has held land in a village *continuously* for twelve years is "a settled rayat." The essential conditions of the definition are *continuous possession of some land* in the village as a raiyat, the presumption created by sub-section (7) section 20 should be borne in mind in this connection; for definition of "village" see sub-section 7, section 3.

The phrase "settled raiyats" are used for *Khudkasht* raiyats of the old regulations. "Two elements," says Mr. Justice Field, "went to make up a *Khudkasht* (1) residence in the village, (2) occupation of land forming part of the village.'—Rent Commission's Report, Vol. II. p. 405.

In the great rent case of Thakooranee Dossee, Mr. Justice Campbell observes—

"There was doubt as to the mode or prescription by which a *Khudkasht* or occupancy tenure was acquired, and which tenures were of this character. It was not certain whether mere settlement in the village on the ordinary rights, without limitation of tenure, gave such a right, or what length of prescription established that right."

Mr. Justice Trevor said, "at the time of the Decennial Settlement, the ryots were in Bengal as in other parts of India divided into *Khudkasht* or resident, and *paekasht* or non-resident. It has indeed been contended before us, that time is of the essence of a *Khudkasht* tenure, that a ryot simply residing in a village in which his land is, is not a *Khudkasht* ryot, and that in order to constitute a *Khudkasht* ryot under the regulations, he must be a resident hereditary ryot, and if he has not succeeded by right of heirship, he does not fall within that class of tenants. But it appears to me that, whether we look to the etymology of the word or the thing itself, there is no reasonable ground for question that *Khudkasht* ryots are simply cultivators of the land of their own village, who after being once admitted into the village, have a right of occupancy so long as they pay the customary rents, and therefore with tendency to become hereditary, and with an interest in the produce of the soil over and above the mere wages of labor and the profits of stock, in other words above the cost of production."

Sir John Shore, in his minute dated 28th June 1789, says :—"It is, however, generally understood that ryots by long occupancy acquire a right of possession in the soil and are not subject to be moved; but this right does not authorize them to sell or mortgage it, and it is so far distinct from a right of property. This, like all other rights under a despotic or varying form of Government, is precarious." * * * "Pottahs to the *Khudkasht* ryots, or those who cultivate the land of the village where they reside, are generally given without any limitation of period, and express that they are to hold the lands paying the rents from year to year. Hence the right of occupying originates, and it is equally understood as a prescriptive law that the ryots who hold by this tenure cannot relinquish any part of the land in their possession, or change the species of cultivation, without a forfeiture of the right of occupancy, which however is rarely insisted on; the zemindars demand and exact the difference. I understand also that this right of occupancy is admitted to extend even to the heirs of those who enjoy it. *Paekasht* ryots, or those who cultivate the land of villages where they do not reside, hold their lands upon a more indefinite tenure. The pottahs to them are generally granted with a limitation in point of time, and where they deem the terms unfavorable, they repair to some other spot." * * * "There are two other distinctions of importance also with respect to the right of the ryots. Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause, have stronger right than others, and may in some measure be considered as hereditary tenants, and they generally pay the highest rents. The other class cultivate lands belonging to a village where they do not reside; they are considered tenants at will; and having only a temporary accidental interest in the soil which they cultivate, will not submit to the payment of so large a rent as the preceding class, and when oppressed, easily abandon the land to which they have no attachment." 3 *Harington p.p.* 422, 434 *and* 438.

The following Extract from the despatch of the Secretary of State to the Government of India, dated 17th August 1882, shews the principles which have been elaborated in this Chapter :—

Para. 7. "Head II. relates to one of the most difficult questions on the whole subject, and is that on which your proposals differ most widely from the views of the Rent Commission, and from those expressed in the letter of the Bengal Government.

"The Rent Commission proposed to maintain the existing rule that 12 years' continuous possession of any land is required to give its holder a right of occupancy in it, but to guard against the failure of that rule in the future, as it has failed in the past, to promote security of tenure by imposing a penalty on eviction. This proposal, you state, has met with no support. The Lieutenant-Governor, still adhering to the principle that occupancy right shall depend upon the status of the ryot, proposed to confer it on all *resident* ryots under the provisions of Section 19 of his Bill. You have fully considered this and other schemes, and you have come to the conclusion that it is impossible to apply effectually the principle on which they are based. You, therefore, propose to take a classification of lands, instead of the status of the tenant, as the basis on which the recognition of the occupancy right shall be effected, and to attach that right to all "ryotti" lands as far as the interest in them of all but nomad cultivators and sub-tenants of occupancy rights is concerned."

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Para. 11. "I would, therefore, suggest for your consideration whether, in place of adopting the principle you recommend as the basis of

the proposed legislation, it would not be desirable to introduce into the Bill provisions somewhat to the effect that every resident ryot shall have a right of occupancy in all the land which he holds in a village or estate if he has occupied for 12 years any land whatever in such village or estate. It will be necessary, in actual legislation, to provide that this right is not forfeited by any sub-division of estates or alteration of village boundaries."

The former law, with regard to rights of occupancy, was contained in Section 6, Act VIII. (B.C.) of 1869. If a person cultivates land in a village by hired laborers or by servants, although he may not reside there, or if the cultivation is carried on on his behalf by members of his family at his risk, he will probably be deemed to "hold" land under this Section. See 9 W. R. p. 579.

The holding must be either by the person himself or a person whose heir he is; consequently where a holding is transferred, the period during which the transferror holds cannot be added to the period of the transferee's possession, to make up the twelve years required by the Section.

Norendro Narayan Roy *v.* Eshan Chunder Sen, 22 W. R. 22, Hyder Buksh *v.* Bhubendro Deb, 17 W. R. 179.

Tara Prosad Roy *v.* Brojokant Acharjee, 15 W. R. 152.

Cl. (4) Under the former law, an association of persons constituting a firm could not acquire a right of occupancy in respect of land taken up by the firm for purposes of cultivation.

Cannan *v.* Koylash Chunder Roy, 25 W. R. 117; Raikomul Dassee *v.* Laidley, 4 I. L. R. Cal. 957.

The right of occupany does not accrue with regard to julkar or fishery rights, Juggobundhoo Saha *v.* Promothonath Roy, 4 I. L. R. 767.

In Forbes *v.* Ramlal Biswas, 23 W. R. 51, the possession of the tenant was for five years joint with three others, and single for the remainder of the twelve years. It was held (Phear and Morris, J. J.) that in order that the right should accrue, the holding should be by one and the same right (see also Mahomed Chamon *v.* Ram Prosad Bhugat, 8 B. L. R. 338).

Payment of rent is not a condition precedent to the acquisition of the right. Narain Roy *v.* Opnit Misr (Mitter and Maclean, J. J) I. L. R. 9 Cal. 305. For acquiring the right of occupancy, two conditions only are necessary, the cultivation or holding of land for a period of twelve years, (2) and holding or cultivating it as a raiyat. Musyatoola *v.* Noor Jahan, I. L. R. 9 Cal. 308.

Effect of acquisition of occupancy-right by landlord.

22. *(1)* When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(3) A person holding land as an ijárádár or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his ijárá or farm.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijárá or farm.

(Cl. 3.) Occupation by persons while holding as farmers does not give them rights of occupancy, but antecedent occupation sufficient for acquisition of the right is not affected by the subsequent taking of a farm, Watson *v.* Jogendro Narain Roy, I. W. R. 76. The principle seems to be that the right of occupancy is a right derogating from the proprietary right, and therefore while the superior right and the inferior inchoate right reside in the same person, the growth of the latter is suspended.

See also 25 W. R. p.p. 503 and 556 ; W. R. January to July 1864, Act X. 77. In *Syed Ameer Hussein v. Sheo Sahai*, 19 W. R. 338, where a tenant cultivated and paid rent for land to persons who were proved to have no title, it was ruled :

"The mere fact that the tenant for some years paid rent to persons who had no title, cannot take away from him the character of ryot, or prevent him from counting those years in the time necessary to give him a right of occupancy." See also *Pundit Sheo Prokash Missr v. Ram Sahai*, 8 B. L. R. 165, *Zoolfun Bebi v. Radhica Prosono Ghose*, 3 I. L. R., Cal. 560, 1 C. L. R. 388.

Speaking of the right of occupancy, the judges say in the latter case : "that is not a right conferred by the lessor ; it is a right which, by virtue of the laws, grows up in the ryot from the mere circumstance of cultivating land for twelve years or upwards and paying rent thereon."

Incidents of occupancy-rights.

Rights of raiyat in respect of use of land.

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy, but shall not be entitled to cut down trees in contravention of any local custom.

A lessee cannot build on land held by him for cultivation. Jugut Chunder Roy Chowdry *v.* Eshan Chunder Banerjee, 24 W. R. p. 220: "The statutory right of occupancy cannot be extended so as to make it include complete dominion over land subject only to the payment of rent liable to enhancement. The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted, and although a liberal construction may be adopted, it cannot extend to a complete change in the mode of enjoyment." Baboo Lall Sahoo *v.* Deonarain Singh I. L. R. 3 Cal. 781, 2 C. L. R. 295. In Kadumbini Dabe *v.* Nobin Chunder Aduck, 2 W. R. 15, it was held that making holes in land for providing earth for bricks or allowing others to do so would be doing permanent damage to the landlord's property. So would be the digging of a tank Monindro Chunder Sirkar *v.* Muniruddee Biswas, 8 B. L. R. app. 40

See Gopeekissen Gossain *v.* Doulut Mir, 1 W. R. 156, where the lease reserved the right in all timber, then growing or hereafter to grow, to the landlord, and the tenant sold the trees. In Ruttunjee Eduljee *v.* Collector of Tana, 10 W. R. P. C. 13, the PrivyCouncil observe, "the trees on the land were part of the land, and the right to cut down and sell those rights was incident to the proprietorship of the land."

In Anund Kumar Mookerjee *v.* Bissonath Banerjee, 17 W. R. 416, it was held that no tenant taking land is entitled to change the nature of that land from what it was when he got it, or make a permanent alteration in the landlord's property; in Tarini Churn Bose *v.* Ramjee Pal, 23 W. R. 298, the judges held that continual use of land for twenty-five years for making bricks, raises a strong presumption of acquiescence on the part of the landlord; where a tenant has been guilty of a breach of duty in the use of his land, such as making a tank in it, building on it improperly, or changing the character of the cultivation, such conduct does not necessarily operate as a forfeiture so as to render the tenant liable to ejectment.

"The principle of giving protection to the landlord against improper usage of the land by the tenant was generally recognized in Europe." His Excellency the Viceroy and President's speech: Debate on the Bill.

"The raiyat ought not to divert the land from the purposes for which it was let." Speech of Sir Steuart Bayley: Debate on the Bill.

The tenant of an agricultural holding planted his jote with mango trees without the consent of his landlord, thus changing the character of the land. More than three years afterwards the landlord sued for a mandatary injunction to have the mango trees removed, it was held that, having stood by and allowed the tenant to spend his labor and capital in the land without taking any action in the matter, the landlord was not entitled to a mandatary injunction. Myna Missr *v.* Rafikum, I. L. R. 9 Cal. 609. Suppose a tenant, in contravention of the terms of his lease, builds upon land, does the building become the property of the owner or is the tenant entitled to remove it? It appears that in Calcutta, where such a matter would be governed by the Hindu Law under section 17, 21 Geo. III. C. 70, the right to the building remains in the tenant, and does not pass to the owner.

In *re* Thakoor Chunder Poramanic, B. L. R., Supplement vol. F. B. 595, see also Parbutty Bewa *v.* Woomatara Dabi, 14 B. L. R. 201, where the question turned on custom, Russic Lal Mudduck *v.* Loke Nath Kurmokar, I. L. R. 5 Cal. 689.

But in the subsequent case of Jugut Mohini Dassee *v.* Dwarka Nath Bysack, I. L. R. 8 Cal, 583 (Garth, C. J. and Pontifex, J., it was held that the law laid down in the Full Bench case is not intended specially as a rule of Hindoo law, but that the Full Bench rather intended to deduce from these various authorities a rule of equity and good conscience to be generally observed in the Mofussil, and further that this rule is different from the law of equity and good conscience which is administered in Calcutta, and which is "the self-same law of equity which is administered in the Courts of England." The Court further decided that if the assignee of a life-estate built on land, he has no right to the building after the life-estate terminates; the result is that in the Mofussil, where a person, in the *bonâ fide* belief he has a title to the land, builds upon it, and it is afterwards proved that the land belongs to another, he would have a claim to compensation or to remove the materials,

Obligation of raiyat to pay rent.

24. An occupancy-raiyat shall pay rent for his holding at *fair and equitable rates.*

Protection from eviction except on specified grounds

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy; or,

(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Devolution of occupancy-right on death.

26. If a raiyat dies intestate in respect of right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: provided that, in any case in which under the law of inheritance to which the raiyat is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

"Speaking for myself, I am not all sure that a right of occupancy gained under Sec. 6 Act X. of 1859 is necessarily heritable." 7. W. R. p. 528, per Peacock, C. J.

Norendra Narayan Roy Chowdry *v.* Eshan Chundra Sen, 13 B. L. R. 274, 22 W. R. 22; Ajoodhya Prasad *v.* Imambandi, 7 W. R. 528. A right of occupancy *per se* is not transferable; it may be so by local custom. The Act leaves the existing law untouched in this respect.

"15. Sections 23 to 26 of the amended Bill take the place of Sections 31 to 36 of the Bill No. II.: but except a saving of custom as regards the descent of the occupancy right in section 26, the only important change they involve is the omission of all provisions regarding the transfer of the occupancy right, which, apart from the matter of sale in execution of a decree for rent (dealt with in Chapter XIV.), we now propose to leave to custom as under the existing law.

"16. The reasons for and against the proposal to make the occupancy right everywhere transferable by an express legislative enactment have been so fully discussed within the last three years, and are so well known to all interested in such matters, that we shall not lengthen this Report by attempting to recapitulate them. It is enough to say that the Government of Bengal, in their letter of 15th September last, proposed to leave the law relating to the transferability of the right for the present untouched in Behar, and that on a further consideration of the question we are of opinion that the most prudent course will be to omit the provisions relating to voluntary transfer altogether from the present Bill." Report of the Select Committee, 12th February 1885. The transfer of a right of occupancy without the consent of the landlord makes the transferee liable to ejectment.

In the Full Bench Case of Norendra Narayan Roy *v.* Eshan Chunder Sen cited above, Couch, C.J.: "Now if a ryot having a right of occupancy endeavours to transfer it to another person, and in fact quits his occupation and ceases himself to cultivate or hold the land, it appears to me that he may be rightly considered to have abandoned his right, and that nothing is left in him which would prevent the zemindar from recovering the possession from the person who claims under the transfer." 13 B. L. R. p. 288; where an occupancy right was transferred by execution sale, and the purchaser allowed the holders to remain on the land as his tenants at will, it was held that the landlord was entitled to re-enter. Dwarkanath Missr *v.* Hurrish Chunder, 4 I. L. R. Cal. p. 925.

Sec. 116 Saves *Khamar Neej Jote, Sir*, and *Zerat* lands from the operation of the provisions of this Chapter, except under the particular circumstances stated therein.

Enhancement of rent.

Presumption as to fair and equitable rent.

27. The rent for the time being payable by occupancy-raiyats, shall be presumed to be fair and equitable until the contrary is proved.

Restriction on enhancement of money rent.

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Enhancement of rent by contract.

29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

(*a*) the contract must be in writing and registered;

(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

Provided as follows—

(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord,

and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing in consideration of his being released from the obligation of cultivating that crop to pay such rent as he may deem fair and equitable.

The proviso was inserted at the instance of the Hon'ble Mr. Evans.

The effect of the Section is that the landlord is prevented from enhancing the rents of his tenants by private arrangement with them beyond twelve and a half per cent., except in the cases mentioned in the proviso. These cases may be divided into three heads :.

1st. Where the landlord has already been realizing enhanced rent at the rate of more than twelve and a half per cent. for a continuous period of at least three years.

2ndly. Where the tenant agrees to the enhancement in consideration of an improvement effected by the landlord, the enhanced rent is payable while the improvement lasts and produces its estimated effect. And, thirdly, where the tenant agrees to pay a higher rent in consideration of being released from the obligation of cultivating a particular crop, such as indigo, the cultivation of which might have induced the landlord to assess him at a light rate.

In a suit by a landlord for enhancement, i fthe tenant alleges that a portion of the land is rent-free, the burden of proving a *prima facie* case as to this is on him, Newaz Bondopadhya *v.* Kaliprosona Ghose, 8 C. L. R. 6.

See also Hurryhur Mookerjee *v* Goomani Kazee, Marshall 523 ; Gooroo Prosad Roy *v.* Jogobundo Mozoomdar, W. R. S. 15 ; Nehal Chunder Mistree *v.* Hurry Prosad Mundul, 8 W. R. 183 ; Bebie Ashrufoonissa *v.* Umany Mohun Deb Roy, 5 W. R. Act X. 48.

Enhancement of rent by suit.

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, namely :—

(*a*) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for

land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate;

(*b*) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

(*c*) that the productive powers of the land held by the raiyat have been increased by an improvement effected by or at the expense of the landlord during the currency of the present rent;

(*d*) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

The former law on the subject of enhancement of rents of occupancy raiyats was contained in Section 18 of Act VIII. of 1869 B.C., which ran as follows:—"No raiyat having a right of occupancy shall be liable to an enhancement of the rent previously paid by him except on some one of the following grounds.—

(1). That the rate of rent paid by such raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in places adjacent.

(2). That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat.

(3). That the quantity of land held by the raiyat has been proved by measurement to be greater than the quantity for which rent has been previously paid by him."

The substitution of the words "in the same village" for "places adjacent" will considerably narrow the sphere of comparison.

The addition of the words "there is no sufficient reason for his holding at so low a rate" will probably give rise to questions of difficulty in suits for enhancement. The standard of "sufficiency" may vary in each case and with every court.

It will be seen that Cl. (*c*) makes a substantial change in the former law, which made the tenant liable to pay enhanced rent if the productive powers of his land increased otherwise than at his expense or by his agency; it was held, under the former law, that the onus was on the landlord, Poolin Behary Sen *v.* Watson, F. B., 9 W. R. 190.

Case law on enhancement. Notice what to contain: where a tenant holds several holdings, the notice should specify them, as also the enhanced rent demandable on each separately, Udoytara Chowdrani *v.* Shibnath Surma, 9 C. L. R, 208, Dwarkanath Haldar *v.* Huri Mohun Roy, 20 W. R. 408. In Gonesh Chunder Hazra *v.* Ram Pria Debea, I. L. R., 5 Cal. 53, the tenant held 800 bighas comprised in 56 plots scattered over four villages, the landlord served a notice,

the heading of which was a mere abstract of section 18 of the Rent Act; below this was a schedule of 56 plots of land. The Court (Birch and Mitter, J. J.) observed "we think a landlord is bound to inform his tenant by written notice of the specific grounds on which he claims to enhance, and that the mere words of the clause are not enough."

Where notices have been held insufficient. Where the notice was worded as follows; "as the rent of the land has been is below the rates prevailing in the pargana and in adjacent places, and as the productive powers of the land and the value of the produce have increased, and as the potit lands have been cultivated, I am entitled to receive from you Rs. 794-5-7-11½ per annum. Gobind Kumar Chowdry *v.* Hurochandra Nag, 4 B. L. R. App. 61. "You the defendants pay less than other ryots in the neighbourhood, and therefore you are to pay for the future such and such rates." Shumsul Osman *v.* Bansidhur Dutt, 7 B. L. R., Ap. 32.

In Banee Madhub Chowdhry *v.* Tara Prosunno Bose, 21 W. R. 33, Sir Richard Couch (C. J.) observes speaking of the provision of the old law as to giving the tenant notice of the grounds upon which an enhancement is sought. "The intention of that is that the undertenant or raiyat shall be informed of the grounds upon which the landlord seeks to have the higher rent. This is not satisfied by giving a notice specifying all the grounds of enhancement mentioned in the Act, some of which may apply to one part of the land, and some to another. It leaves the tenant in uncertainty as to the grounds upon which the higher rent is demanded. It does not give him the information which we think it was intended he should have. In this case there are 59 plots of land containing 124 beegas. It is impossible to suppose the same grounds of enhancement, even if they were consistent, would apply to every plot. One part may be subject to enhancement on one ground and another part on another and this notice does not enable the tenant to tell what it is that the landlord really asserts as to his right to enhance."

In Shib Narain Ghose *v.* Aukhil Chunder Mookerjee, 22 W. R., 485, where the defendant held lands in four separate Mouzas, and there was a single notice on the grounds that the productiveness of the land and the value of the produce have increased independently of the tenant's exertion and expense, and that the jumma is less than that current for surrounding lands in the same village, the High Court (Amslie and McDonell, J. J.) held the notice was bad, as regards the increased productive powers of the land, but good with respect to the increased value of produce.

The true rule seems to be that where the defects are such as may reasonably be held to mislead the tenant, or to prejudice him in the conduct of his case, they will vitiate the notice.

Who is competent to give notice. A manager appointed by the Court under section 243, Act VIII. of 1859, to collect rent has no power to issue a notice of enhancement, Khettermohun Dutt *v.* Wells, 11 C. L. R. Where a zemindar served a notice of enhancement on the raiyats of a mouza, and afterwards granted a lease thereof to the plaintiff, it was held the latter was competent to sue on the basis of such a notice, Khashi Roy *v.* Farzand Ali Khan, 9 B. L. R., 125

Mode of service. In a joint Hindoo family service on two out of three brothers who resided in the joint family house was held sufficient, the third brother residing in a different district, Nobodeep Chunder Shaha and Shonaram Das, 3. C. L. R. 359. I. L. R., 4 Cal. 592. The

conditions under which substituted service can be valid must be proved, Buradakant Roy *v.* Raj Chunder Burnoshil, 19 W. R. 353. A suit for enhancement in respect of a tenure held jointly cannot proceed except on notice to all the joint tenants, Shurnomoyee *v.* Johur Mohomed. 24 W. R. 381. When a tenure was held by a Hindoo and three Sonthals, and it was shewn that service of the notice of enhancement had been personal on the latter, but only on the son of the former who was an adult, and living with his father as a member of a joint Hindoo family, it was held that the service on the Hindoo was not sufficient. Bydonath Mashant *v.* J. W. Laidlay, I. L. R. 10 Cal. 433.

Enhancement generally; where the defendant obtained a decree in the Courts in India, declaring that the plaintiff was liable to pay enhanced rent on account of his tenure, and subsequently recovered arrears of rent at the enhanced rate. The decree for enhancement was, however, reversed by the Privy Council; the plaintiff then sued for a refund of the sums paid in excess; it was held by a majority of the Full Bench that such a suit would lie, Kali Churn Dutt *v.* Jogesh Chunder Dutt, 1 C. L. R. 5. Where in a suit for enhancement the plaintiff failed to prove notice of enhancement, but the Court gave a decree declaratory of the plaintiff's right to enhance, it was held that such a decree was conclusive in a subsequent suit for enhancement, Nuffer Chunder Pal Chowdry *v.* Poulson, 12 B. L. R. 53. In Obhoy Chunder Sirdar *v.* Radhabullab Sen, 1 C. L. R. 549, the defendant had obtained a settlement of land for twenty years, and planted a betul-nut garden therein, on the expiration of the term the landlord sued to enhance on the ground that the productive power of the land had increased, it was held he was entitled to do so. If a landlord, after he obtains a decree for enhancement, keeps it in abeyance and accepts less rent for a term, he cannot without fresh proceedings realize enhanced rents in accordance with the decree, Nobin Chunder Sirkar *v.* Gour Chunder Saha, 7 C L. R. 161 I. L. R. 759, where land is let under a Jungleblooree lease the rent for the first few years being fixed at a reduced rate, and then at a particular sum as full rent, that rent cannot be enhanced, Huro Prosad Ray *v.* Jumnejoy Boiragee, 12 C. L. R. 251. In a suit for enhancement the defendant denied service of notice and liability of his tenure to enhancement; the suit was dismissed on the ground, of non-service of notice, the Court however stated in its judgment that the tenure was enhancable, although the decree omitted all mention of this, the defendant did not appeal; in a subsequent suit for enhancement on a valid notice it was held that the former judgment was a bar, Neamat Khan *v.* Phadu Buldi, I. L. R., 6 Cal. 329. F. B.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate.

(a) in determining what is the prevailing rate, the court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the court;

(*b*) if in the opinion of the court the prevailing rate of rent cannot be satisfactorily ascertained without a local enquiry, the court may direct that a local enquiry be held under Chapter XXV. of the Code of Civil Procedure by such revenue officer as the Local Government may authorize on that behalf under Section 392 of the said Code.

(*c*) in determining under this section the rate of rent payable by a raiyat, his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(*d*) in ascertaining the prevailing rate of rent, the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

Under the former law it was held that the rates are not restricted to those of the Pergunah or the village, but may be rates of the places adjacent. Syed Sudurudeen Mutwalee *v.* Bhetoo Pulee, 5 W. R. Act X. 70.

In Audhbehary Sing *v.* Dost Mohomed, 22 W. R. 185, it was held that it is not allowable to the court to strike an average of the rates of rent. In Tikaram Singh *v.* Mrs. Sandes (Jackson and McDonell, JJ) 22 W. R. 335, it was held that although the landlord may not give evidence as to the rate of rent payable by tenants of the same class holding lands of precisely similar quality and adjacent to those occupied by the tenant, yet if the comparison be made with rates paid for lands of a somewhat better quality, and a proper enhanced rate awarded, it will be in conformity with the spirit of the law. See. 1, Agra Reports, p. 59.

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

(*a*) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(*b*) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the

last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the latter period shall be reduced by one-third of their excess over the average prices during the earlier period;

(*c*) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (*a*), the Court may, in its discretion, substitute any shorter periods therefor.

In the case of Bhugruth Doss *v.* Mohasoop Roy, 6 W. R. Act X. 34, it was held "the value of produce means an increase in its natural and usual value in ordinary years, and not accidental and exceptional prices of a particular year."

The Act takes into account the average prices of ten years immediately preceding the institution of the suit.

Cl. (*b*) The rule of proportion was laid down in the Full Bench Case of Thakooranee Dassee *v.* Bisheshor Mookerjee, 3 W. R., Act X. 9.

Rules as to enhancement on ground of landlord's improvement.

33. Where an enhancement is claimed on the ground of a landlord's improvement—

(*a*) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

(*b*) in determining the amount of enhancement the Court shall have regard to—

(i) the increase in the productive powers of the lands caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent;

(*c*) a decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration, in the event of the improvement not producing or ceasing to produce the estimated effect.

In Huro Prosad Roy Chowdry *v.* Wooma Tara Debia (Kemp and Glover, *J.J.*) *2 W. R., Act X 12, it was held that "a landlord is not entitled to enhancement of the ground of improvement where it is not proved that the increased value of the land is due to such improvement.*

Rules as to enhancement on ground of increase of productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(*a*) the Court shall not take into account any increase which is merely temporary or casual;

(*b*) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

In the Full Bench case of Thakooranee Dassee *v.* Bisheshor Mookerjee, 3 W. R., Act X. 29, it was held by a majority of the Court that the words "fair and equitable" in Section 5 of Act X. of 1859 "meant not the rate obtainable by open competition, but the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent." In Huro Prosad Roy Chowdry *v.* Chundee Churn Boyragee and others, Wilson J. observes when land is let for the purpose of clearing jungle or other reclamation, and on this ground, or any other ground mentioned in the lease, a reduced rent is provided for the first few years, and it is said that the rent is to be at such and such a rate, a sum as the full rent, does that mean, as the words seem to import, that the full rent is to be the full rent as long as the tenure subsists, or is such a rent liable to enhancement under the provisions of the Rent Law? We agree with the Lower Appellate Court in thinking that the decision of the Privy Council in Sarada Soondory Dabee *v.* Golam Ali is an authority for holding that the former view is the true one, and that in the present case the rent cannot be enhanced."

Power to order progressive enhancement.

36. If the Court, passing a decree for enhancement, considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

Limitation of right to bring successive enhancement suits.

37. (*1*) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be

entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March 1883, or if within the said period of fifteen years the rent has been commuted under section 40, or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid, or on any ground corresponding thereto, or dismissing the suit on the merits.

(*2*) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

Reduction of rent.

Reduction of rent.

38. (*1*) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, namely :—

(*a*) on the ground that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual ; or,

(*b*) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(*2*) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

In Ramkant Chowdry *v.* Brindabun Chunder Gopee, 2 W. R. Act X. 71, the lease provided for enhancement if the lands should be found to exceed the area stated therein ; the area on measurement was found to be less : it was held that the tenant was not entitled to abatement.

Price-lists.

Price-lists of staple food-crops.

39. (*1*) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local-Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(*2*) The Collector may, if so directed by the Local Government, prepare for any local area, like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area within the said period of one month presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-list shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled, from the periodical lists prepared under this section, lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shewn in the lists prepared for any year subsequent to the passing of the Act are correct, unless and until it is proved that they are incorrect.

(7) The Local Government, subject to the control of the Governor-General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

The words in Sub-section 6 were "prices shewn thereby," the substitution of the words "shewn in the lists prepared for any year subsequent to the passing of the Act," was made at the instance of the Hon'ble Mr. Hunter. The following extract from his speech will elucidate the text :—

"The present Bill substitutes a new and sharp procedure for enhancement and reduction of rents in place of an old and complicated one. Under the existing law, such enhancements and reductions of rent are granted on the ground, among others, of increase or decrease in the value of the produce. In order to obtain an enhancement on this ground, the landlord had first to prove an increase in prices of the actual crops taken off the land; second, to show the quantity and quality of those crops; third, to establish the arithmetical relation of the prices to the produce, after making allowances for many incidental considerations and drawbacks. Finally, he had to work out a proportion statement between these complicated factors at present and in time past. The present Bill substitutes for this difficult and complicated process, the simple question of a

rise or fall in prices of staple food crops. That is to say, the single fact of a rise or fall in prices, which was merely the initial fact to be ascertained under the old law, now becomes the only fact to be established. *The result is, that enhancements which were not practicable on this ground will now become practicable. The Bill* further simplifies the burden of proof, in the first place, by confining the question to the prices, not of the actual produce of the land, but of certain staple food crops ; in the second place, by publishing price lists in the official *Gazette*, which are to be accepted by the courts as presumptive evidence. In this way the Bill narrows the evidence to a single point, and it then provides that Government shall supply evidence on that point. The Bill originally proposed that these lists should be taken as conclusive evidence ; it appeared to the Select Committee, however, that it would be unsafe to assign so high a value to these lists, and the Bill, as now revised, accords only the value of presumptive evidence to these lists. In doing so, however, I venture to urge that we have given the same legal value to two classes of evidence of which the real value is essentially different. For the lists to be published in the official *Gazette* are of two distinct classes ; old lists of prices, collected under no adequate safeguards of their accuracy ; and new lists of prices. to be collected under the very efficient safeguards provided by this Bill. I believe that the future lists to be compiled under those safeguards will be worthy of being accepted as presumptive evidence. But I think there is evidence to show that the old lists collected without any of those safeguards cannot safely be accepted as presumptive evidence. At a late stage in the Bill, a decennial period was substituted for prices in place of a quinquennial period : so that the figures submitted to the Committee only enable me to show what the results would be of accepting those lists for the quinquennial periods originally contemplated. But if we take the price lists submitted to the Committee for quinquennial periods, they would give very different results in adjoining districts, districts in which such differences are not justified by the actual facts. We must remember that these lists are intended only to show the rise or fall in the purchasing value of silver ; and we know that the rise or fall in that value has not differed very greatly in adjoining districts. But the lists on one side of the Hughli river would give an enhancement of 12 per cent. in Burdwan District, and one of 28 per cent. in Nadiya District on the other side. Further up the Ganges, the enhancement would be 10 per cent. in Patna district on the southern bank, and close on 20 per cent. in the Muzafarpur district on the Northern bank. Proceeding eastwards the variations would be from 6 per cent. to 25 per cent in districts within a given radius of Calcutta. These widely dissimilar results are arrived at by calculating on the price list of rice alone. If we endeavoured to correct their discrepancies by adding a second crop to the calculation, say maize, as the Government would do, we get still more astonishing results. In the Bhagulpur district, rents would be enhanced 25 per cent if calculated in the average prices of rice submitted to the Committee, but they would be reduced 46 per cent. if calculated in maize. In the next district but one to the west, Muzafarpur, rents would, on the same basis of calculation, be enhanced 20 per cent. if estimated in rice rates, but they would be reduced about 25 per cent. if estimated in maize rates. In Patna District, which is at places conterminous with these two districts, the reduction of rents, if estimated in maize, would not be 46 per cent. as in Bhagalpur, nor 22 per cent. as in Muzafarpur, but only 2 per cent. These results are worked out from the figures submitted to the Select Committee. I am aware that they would be revised

before they were published in the *Gazette*, but after careful enquiry, I do not find that data now exist for correcting those old lists with a degree of certainty which ought to give to the results the value of *presumptive evidence. I would ask the Council, therefore,* while allowing the value of presumptive evidence to the new lists, to give the old lists neither more nor less value than they had under the Evidence Act at the time when they were collected, that is, they shall be relevant evidence, but not presumptive. I submit this amendment not as an amendment on behalf of the zemindars, nor on behalf of the raiyats, but on the ground that it is just and fair to both. We are putting a sharp weapon in the hands of both landlords and tenants, a double-edged weapon which may produce startling results both in the enhancement and in the reduction of rents.

Commutation.

Commutation of rent payable in kind.

40. *(1)* Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to the Collector or Sub-divisional Officer, or to an officer making a settlement of rents under Chapter X., or to any other officer specially authorized in this behalf by the Local Government.

(3) On the receipt of the application, the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination, the officer shall have regard to—

(a) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;

(b) the average value of the rent actually received by the landlord during the preceding ten years, or during any shorter period for which evidence may be available; and,

(c) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect

and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(6) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

The following extract from the note of the Hon'ble Mr. Justice Field may throw light on the history of this provision in the Act :—" Tithes were formerly paid in kind, *i. e.* the person entitled to the tithe received a tenth of the crop. This system was found to be vexatious in the extreme, and productive of disputes and litigation, just as the system now in force in parts of Behar produces constant irritation and oppression. It was finally decided to be a source of so much bitterness and want of charity, that the following rules were laid down for the conversion of tithes into a money payment (1) find the gross average money value of the tithe of a parish or district for seven years ending on Christmasday of 1835, (2) apportion the amount of that value upon the lands of the several tithe-payers, (3) ascertain how much corn could be purchased with such amount, one-third of it to be laid out in wheat, one-third in barley, one-third in oats, at the average price of corn for the seven years preceding 1835, (4) in every future year make payable the price of the same quantity of wheat, barley and oats at their average prices founded on a like. calculation of the official returns for the seven years ending at each preceding Christmas."—Mr. Justice Field's Digest : Note on Enhancement, pp. 250-51.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

Application of chapter.

41. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy raiyats.

Initial rent of non-occupancy-raiyat.

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Conditions of enhancement of rent.

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46. Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

Grounds on which non-occupancy raiyat may be ejected.

44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely):—

(a) on the ground that he has failed to pay an arrear of rent;

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

(*c*) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;

(*d*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

The former law was that if a non-occupancy tenant held land without a term, or held over, he was liable to eviction after notice. The Act limits the exercise of the landlord's power to evict, to specific cases stated in clauses *(a)* to *(d.)*

The regulation of the rent of a non-occupancy tenant is left to contract only when he *enters* into possession: if he continues in possession on the expiry of his term, it would seem from the terms of section 47 that his rent is to the regulated by the Court, and not by the will of the landlord.

It was held under the former law that if, notwithstanding the service of notice, the tenant remained in possession, he would have to pay a fair and equitable rent only, 1 B. L. R. F. B. 25.

Conditions of ejectment on ground of expiration of lease.

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat, unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

The rules for the service of notice under this section and Cl. (4) section 46 will be prescribed by the Local Government. A cultivating raiyat, not having a right of occupancy and not holding for a specified term, was ejected by the landlord's putting in a fresh tenant. The ejected tenant brought a suit for recovery of possession; it was held that his tenancy could only be determined by a reasonable notice to quit. F. B. Rajendronath Mookopadhya *v.* Basedur Rohoman Khondkar, I. L. R., 2 Cal. 146.

Under the old law, the question what was a reasonable notice to quit was left to the court to decide in each case. See Jagat Chunder Roy *v.* Rup Chand Chango Roy, I. L. R. 9 Cal. 48.

Conditions of ejectment on ground of refusal to agree to enhancement.

46. (*1*) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the

raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

(2) A landlord, desiring to tender an agreement to a raiyat under this section, may file it in the office of such court or officer as the Local Government appoints in this behalf for service on the raiyat. The court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served, it shall, for the purposes of this section, be deemed to have been tendered.

(3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), the court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under sub-section (3), he shall be deemed, for the purposes of this section, to have refused to execute it.

(6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

(8) If the raiyat does not agree to pay the rent so determined, the court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the court shall have regard to the rents generally paid by raiyats for

land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Section 46 embodies an entirely novel provision. The procedure for the ejectment of a non-occupancy tenant, on the ground that he has declined to pay an enhanced rent demanded by the landlord, is made extremely complex. In the first place, he is to be tendered an agreement, either privately or through the court, or through such officer as may be appointed by the Local Government. If he does not execute and file the agreement, the landlord may sue to eject; thereupon the court shall determine what rent shall be fair. If the tenant agrees to pay the rent so determined, he may remain on the land for five years on payment of such rent. If he does not, he is liable to eviction.

Speaking of the provisions of this section, Mr. Justice Field observes: "When the agreement is tendered to the raiyat out of court, he will deny the tender, and when it is served through the court, he will deny the service, and the experience of enhancement notices shews how extremely difficult it is for the landlord to prove tender or service. The result will be that ejectment will rarely if ever prove successful."—*Sup. Gaz. India*, 11th October 1884, p. 65.

The word "raiyats" in sub-section 9 evidently refers to those of the same class.

In Pitumbur Kurmakar *v.* Ramtonoo Roy, 10 W. R. 122, the tenant was found to have no right of occupancy, and the landlord sought to enhance his rent, amongst other grounds, on the ground that the land was situated on the banks of a navigable river, and that a Government road had been opened in the neighbourhood; it was held he was entitled to do so.

Explanation of "admitted to occupation."

47. Where a raiyat has been in occupation of land, and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

A non-occupancy tenant is liable to pay only fair rent if the landlord sues for enhancement of rent. Jeeunlal Jha *v.* Kalinath Jha, 5. R. W. 41.

CHAPTER VII.

UNDER-RAIYATS.

Limit of rent recoverable from under-raiyats.

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same (namely):—

(a) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(b) in any other case—twenty-five per cent.

Restriction on ejectment of under-raiyats.

49. An under-raiyat shall not be liable to be ejected by his landlord, except—

(a) on the expiration of the term of a written lease;

(b) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

CHAPTEL VIII.

General Provision as to Rent.

Rules and presumptions as to amount of rent.

Rules and presumptions as to fixity of rent.

50. *(1)* Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy, or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

The Select Committee observe—

"We have omitted from the section (50) which enacts the well known presumption arising from holding at a rate unchanged for 20 years, the sub-section which made the sub-section applicable to produce rents, as opinions were opposed to it."—See Mohomed Yacoob Hussein *v.* Shaik Chowdry Wahed Ali, 4 W. R. Act X. 23.

The essential words of section 4 Act VIII. of 1869 (B. C) were, "whenever it shall be proved that the *rent at which land is held*," &c., and it was held that the mode in which the tenant acquired the land did not affect the application of the rule. Tirtha Nund Thakoor *v.* Herdu Jha, I. L. R. 9 Cal. p. 252; Ramnath Lal Bhagut *v.* Watson per Peacock, C. J., 1 Rev. and P. J. p. 54; Rajkishore Mookerjee *v.* Hurryhur Mookerjee, 10 W. R. p. 429; Kashinath Lushkur *v.* Bamasoondery, 10 W. R. p. 117.

The substitution of the words "tenure-holder or raiyat and his predecessor" would seem to make the mode of acquisition of the land an important factor in considering the question of the continuity of the payment of rent. The payment of rent must be uniform during the incumbency of the tenure-holder or raiyat or his predecessor in interest, and it is submitted where the land is not transferred, as in the case of Tirthanund Thakur, the presumption would not arise.

SECTION 50, Sub-section (2.) If it is proved—*i. e.* proved to the satisfaction of the Court, and not necessarily by the best evidence, 3 W. R., Act X. Rulings, p. 14, Hurronath Roy Chowdry *v.* Bibi Khojesta Khatoon.

The fact alone that sums were paid in some years less than the payments in other years or less than the fixed rate, may admit of explanation, and does not necessarily shew that defendant's holding is not a holding at a fixed rate.

Hurronath Roy *v.* Chittramony, 3 W. R. Act X. 122.

The break of one year in 20 is not sufficient to set aside the presumption that the receipts for 19 years prove the payment of a uniform rent. Tarini Kanth Lahoree Chowdry *v.* Kali Mohan Surma, 3 W. R. Act X. 123.

Where there was a division of the holding which led to a certain area being given to one and certain other area to another co-sharer, and the rates assessed on each portion were different, but the total rent remained the same, held such a circumstance would not vitiate the presumption. Gopal Chunder Bose, Appellant, 3 W. R. p. 132 Act X.

Sub-Division of, addition to or subtraction from a holding made with the consent of the zemindar does not destroy its continuity. 3 W. R. p. 135, Hills *v.* Hurro Lal Sen.

It is not necessary that payment of rent at 20 years at an uniform rate should be proved by full legal and direct, and not by presumptive, evidence. Radha Nath Sirkar, p. 151, 3 W. R. Act X.

Where the tenant pleaded that he had paid a uniform rate of rent, and was therefore protected under Section 4; that the land was held at fixed rates by his grandfather, and it came to him by inheritance from what period he could not exactly say, but that it was a tenure of long standing: the High Court ruled it was not necessary to plead specially that he held from the Decennial Settlement. Hem Chunder Chatterji, p. 163, Act X. vol. 3 W. R.

Where a tenant simply pleaded he was not liable to pay enhanced rent, and filed 21 years' receipts, the plea was held to be sufficient. Koonwar Raj Kumar Roy, Appellant, p. 70 Act X. Rulings, III. W. R.

Where the tenant pleaded that two tenures were created in 1173 and consolidated in 1245, and subsequently again divided with the

landlord's consent, but that such re-arrangement left the rent unchanged. *Held* that if the assertion were proved, it would not vitiate the presumption. Raj Kumar Mookerji, Appellant, 2 W. R. Act X. p. 2.

Nominal reduction in the rent is not sufficient to prevent the presumption arising, Ibid p. 74, nor is it necessary to plead specifically that the tenant has held from before the Permanent Settlement (Ibid, p. 74) where the tenant pleads a *mourosee pattah* which is found false, he cannot fall back upon the presumption. Petumber Shaha *v.* Jeebun Singh, 2 W. R. Act X. p. 6 ; nor where he pleads a *patta* subsequent to the Settlement Ibid, p. 30.

Receipts for 20 consecutive years are not necessary to give rise to the presumption. Ibid p. 60.

An unexplained variation of one rupee in a total jumma of Rs. 60 is not a material variation so as to deprive a tenant of the benefit of the presumption of uniform payment from the Permanent Settlement. Anund Lal Chowdhary *v.* James Hill, 4 W. R. Act X. p. 33.

Where a raiyat proves to the satisfaction of the court that he has paid the same rate of rent for 20 years, the production of a *patta* subsequent to the Settlement, if its terms are not inconsistent with the inference that the tenancy is a continuance of a former state of things, will not defeat the presumption. Kissen Mohun Ghose *v.* Eshan Chunder Mitter, 4 W. R. Act. X. p. 36. Koruna Moyee Dasee *v.* Shib Chunder Dey, 6 W. R. Act X. 50.

Production of a *pattah* not necessary before a raiyat can claim the benefit of the presumption. Nyamutulla *v.* Gobind Chunder Dutt, 4 W. R. 25.

The admission of a raiyat that his tenure was acquired thirty or thirty-five years ago rebuts the presumption Mugno Moyee Dabee *v.* Huro Chunder Proot, 5 W. R. Act X. 27.

Uniformity in the *rate* and not in the *amount* is essential. Messrs. Moran & Co. *v.* Anund Chunder Mojoomdar, 6 W. R. Act X. p. 35.

Variation of a few annas would not affect the presumption. Tara Soondari Barmonya *v.* Shibeshwar Chatterjee, 6 W. R. p. 50.

Uniform payment of rent must be proved, not presumed, Ram Kishen Mundul *v.* Chand Mundul, 5 W. R. Act X 84, where the defendant did not especially allege that he held at a fixed rate from the time of the Settlement, but pleaded that he and his brother had been in possession for a long time, and claimed to hold at a fixed rate under Sec. 4 Act X. of 1859 : it was held his plea was good. Gur Das Mundul *v.* Shaikh Darbari, 5 W. R. Act X. 86, Rakhal Dass Tewary *v.* Kenaram Halder, 7 W. R. p. 242 ; Poolin Behary Sen *v.* Nemy Chand, 7 W. R. p. 242. Zemindars' collection papers, even when attested, are not conclusive proof that the raiyat has paid at a varying rate. Gopal Mundal *v.* Nabo Kissen Mookerjee, 5 W. R. Act X. 83.

Uniform payment must be established for twenty years, before the tenant can have the benefit of the presumption. Premsahoo *v.* Shekh Nyamut Ally, 6 W. R. Act X. 90.

Positive proof is requisite to rebut the presumption Anung Soondari Chowdhurani *v.* Durga Moni Debi, 6 W. R. Act X. 91. Ram Lochun Gopi *v.* Bama Soondari. Ibid 95.

A trifling difference in the amount of rental paid is insufficient to affect the presumption, Munsow Ally *v.* Bunao Singh, 7. W. R. Act X p. 282. Bisheshwar Chuckerbutty *v.* Woma Charan Sing, 44, "where the defendant's allegation, whether oral or written, suggests a commencement of the holding at a much later period (*i. e.* than the Permanent Settlement), and his evidence is of the same character, then I do not think we can give such effect to his defence, or that the presumption claimed will arise from the proof of 20 years'

occupation at a rent unchanged," per Jackson, J., in Hureck Singh *v.* Toolsi Ram Sahai, 11 W. R. p. 84.

"We frequently find that in dealing with this presumption, the courts below, instead of addressing themselves to the question at issue, *viz. whether the rent has been changed or not*, confine their enquiry to one point, *viz.* whether one uniform rate *has been paid or not*. There might be cases in which a raiyat might not have paid his rent for many years prior to the institution of the suit for enhancement, but if there be no change in the rent payable by him he is not to be deprived of the presumption which the law has expressly laid down for his benefit," *per* Mr. Justice Dwarka Nath Mitter, in Ahmed Ali *v.* Golam Guffoor, 11 W. R. Act X. p. 432. See observations of the Court to the same effect in Sham Churn Kundu *v.* Dwarka Nath Kobiraj, 19 W. R., 100.

In Kundu Messer *v.* Gonesh Singh 15 W. R. 193, Mr. Justice Mookerjee observes :—"The intention of the legislature appears to us to be that where a ryot states that his tenure dates so far back as the date of the Permanent Settlement, and pleads that he has been paying rent at an uniform rate from that time, he is entitled to the benefit of a presumption under Act X. if he can show that he has been paying rent at the same rate for 20 years next preceding the year of suit. But it is merely a presumption which the legislature thought it necessary to give to a ryot because the permanent settlement had been made at a very early period, and because it would be impossible at this distance of time for a ryot to show by any strict proof that he has been paying rent at the same rate from that time. But from the defendant's own statement and his title deeds it is apparent that his tenure commenced from a date later than the permanent settlement, surely he is not entitled to any presumption that the tenure existed from before." In Radha Gobind Roy *v.* Shama Soonduri Dabee, 21 W. R. 403, which was a suit for enhancement, the defendant relied upon a chit of 1257 to prove that he had paid a uniform rent for twenty years. and stated that his receipts had been destroyed by fire. The chit showed his rent was the same as that mentioned in the plaintiff's notice of enhancement. The plaintiff did not prove there was variation of the rent but tried to establish a later origin of the tenure, the Court held the chit was good independent evidence upon which the presumption might legally be founded. Pearee Mohun Mookerjee *v.* Koylash Chunder Byragee, 23 W. R. 58, follows the Full Bench Case in 6 W. R. Act X. 50.

In Baboo Jan Chowdry *v.* Jasadhur Misser, 1 C. L. R. 392 (Jackson and Kennedy, J. J.) the defendant proved that he had held the land for over twenty years at an unchanged rent, and he claimed the benefit of the presumption which by law arises under such circumstances. This was met by the plaintiff producing a potta of the year 1202 (1795) which was said to be the origin of the tenure, it was held that the pottah must be proved to be genuine, to refer to the tenure in suit, and that it must further be established that by it the rent was fixed at the date it bore; see also Sarut Soondori Dabia *v.* Anund Mohun Ghuttuck, 4 C. L. R., 448 and I. L. R. 4 Cal. 793.

In Dukhina Mohun Roy *v.* Kurimoola Mukhteer, XII. W. R. 243, Norman, J., held that the rule laid down in Section 4, Act X. of 1859, ought to be applied even to suits not under the Act.

Presumption as to amount of rent and conditions of holding.

51. If a question arises as to the amount of a tenant's rent, or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Alteration of rent on alteration of area.

Alteration of rent in respect of alteration in area.

52. *(1)* Every tenant shall—

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which, having previously belonged to the tenure or holding, was lost by diluvion or otherwise, without any reduction of the rent being made; and,

(*b*) be entitled to a reduction of rent in respect of any deficiency proved by measuremeut to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(*a*) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;

(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area; and

(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder to the profits to which he is entitled in respect of the rent of his

tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

Cl. (*a*). Where the tenant expressly stipulates to pay additional rent for excess land that may be found on measurement, no notice is necessary to enable the landlord to claim enhanced rent on account of such excess land. I. L. R., 9 Cal. p. 72. Dwarkanath Bidyabhushan *v.* Baburam Laskar. Nistarini Dasi *v.* Bonomally Chatterjee, 4 C. L. R. 278, Laidley *v.* Bishu Charan Pal, I. L. R. 11 Cal. 553. In such a case there must be a separate measurement for the express purpose of carrying out the stipulation, Raja Lachmon Proshed Gorgo *v.* Lokhon Chunder Kor, 3 C. L. R. 74, Ekram Mundle *v.* Hullodhur Pal I. L. R. 3 Cal. 271.

"Where land held by tenants with rights of occupancy was completely submerged for a number of years, and during the period of such submersion no rent was paid by the tenants, it was held that by non-payment of rent during such period they had forfeited their rights of occupancy." Hem Nath Dutt *v.* Ashgur Sirdar, I. L. R., 4 Cal. 894.

Where land has been added to the jote of a tenant by gradual accretion, the landlord is entitled to an increased rent on account of such accretions on the conditions laid down in Regulation XI. of 1825, Section 4 Cl. (1). Shoroshutti Dossee *v.* Parbutty Dassee, 6 C. L. R. 362; see also Gopi Mohun Mozoomdar *v.* Hills, 5 C. L. R. 33, a suit for enhanced rent for increase of the area of a jote after accretion must be after service of notice, Hura Sundori Dasi *v.* Gopi Sundari Dasi, 10 C. R. 559, Brojendra Kumar Bhumik *v.* Upendra Narain Singh, I. L. R. 8 Cal. 706, Ram Nidhi Manji *v.* Parbati Dasi, I. L. R., 5 Cal. 823.

Where the plaintiff held a jote under the defendants and their co-sharers, and a partition of the estate was effected in 1877, and to the defendant was allotted only 15 cottahs out of the plaintiff's jote. The defendant notwithstanding recovered by decree in May 1881 rent for a larger quantity that what the plaintiff held under him; the plaintiff therefore sued for reduction or rather for apportionment of the rent due to the defendant in September 1881; held that the suit was not barred by reason of its having been brought beyond a year from the date of partition, and that the proper period for bringing such a suit was 6 years, Durga Prosad *v.* Ghosita Goria, I. L. R., 11 Cal. 284.

Cl. (*b*.) In Ram Narain Chuckerbutty *v.* Poolinbehary Singh, 2 C.L. R., 5 the plaintiffs patnidars sued the defendants who were darpatnidars under them for rent, and the latter claimed an abatement on the ground that a part of the land had been taken away for the purpose of a railway twenty-four years previously, it was held that the long silence of the latter in bringing forward their claim disentitled them to relief.

It seems, however, to have been held that a claim for abatement is a recurring cause of action, and although a tenant may have paid the full rent previously, he would still be entitled to bring forward his claim to abatement in answer to a suit for rent for a subsequent year Moharaja Dheeraj Mattab Chund Bahadoor *v.* Chittra Coomaree Bibee, 16 W. R. 201, Gour Kishore Chunder *v.* Bono Mali Chowdry, 22 W. R. 117.

In Nobo Doorga Dossee *v.* Fyaz Buksah Chowdry, 24 W. R. 403, the defendant had sued the plaintiff for rent, the latter had pleaded she was entitled to abatement, and had obtained a deduction of a certain amount from the rent of the year in suit, less, however, than what she had claimed; the plaintiff then sued to obtain an abatement *for the future*, and the question arose whether the judgment in the previous case estopped her from claiming more than what had been adjudged by the Court. The Court (Sir Richard Garth, C. J. and Birch, J.) held it did.

In Peary Mohun Mukerji *v.* Audhiraj Aftab Chand, 10 C. L. R., 526, the plaintiff, an auction purchaser at a sale under Regulation VIII. of 1819, sued for abatement in respect of lands taken by Government for the purpose of a canal; compensation for this land however had been wholly granted to the former patnidar, the defendant expressly declaring his intention not to allow any abatement, it was held that the plaintiff must be presumed to have notice of the land acquisition proceedings, and was not entitled to claim any deduction from the rent of the tenure.

In Ishan Chunder Chowdry and Chunder Kanth Roy 13 C. L. R., 55, the defendant was a purchaser at an execution sale for rent, being sued by the plaintiff for rent, he pleaded non-liability to pay the full rent and interest at the rate claimed on the ground that the area of the tenure had been diminished by deluvion. The Kubulyut however which created the patni expressly stipulated that no deduction was to be allowed on any account and provided for interest at the rate claimed. The Court (Field and Wilson, J. J.) held following Deen Dyal Paramanic *v.* Juggesher Roy, Marshall 252 that the defendant though auction purchaser was bound by the terms of the Kubulyat. See also Seetanath Bose *v.* Sham Chand Mitter, 17 W. R. 418, Brojonath Koondoo *v.* Unant Ram Dutt, Ibid 449.

A raiyat cannot claim abatement on the ground that raiyots of the same class with himself pay less for similar lands in the vicinity, Babun Mundle *v.* Shib Koomaree Burmonee, 21 W. R. 404.

Payment of rent.

Instalments of rent.

53. Subject to agreement or established usage, a money rent payable by a tenure-holder or raiyat shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Time and place for payment of rent.

54. (*1*) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

(*2*) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village—office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the Local Government may from time to time make rules, either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order

(*3*) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

The privilege given by Sub-section 2 under rules, to be framed by the Local Government, to remit rents to the landlord by postal money-order,

is new, and may give rise to complications, if the declarations made by him under the next Section, conflict with the accounts of the landlord.

Application of payments.

55. *(1)* When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Receipts and Accounts.

Tenant making payment to his landlord, entitled to a receipt.

56. *(1)* Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II. to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may from time to time prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Under Cl. (1) the receipt is to be "signed" by the landlord. The practice hitherto was for the gomasta or tesildar to sign it; in the case of an absentee landlord, it will have to be "stamped" or impressed with his seal or device which would be equivalent to "signed," under Sub-section (14) Section 3. The form of the receipt given in Schedule II. of the Act, however, shews that the receipt may be signed either by the landlord or his "authorized agent". The form further shews that payments and the dated on which they are made are all to be entered in the same receipt, so that the tenant may have to bring it every time he comes to pay his rent. If he does not and no receipt is granted *i. e.* no corresponding entry is made in the tenant's receipt, it is submitted there will be neither "refusal" nor neglect within the meaning of the Section.

"The giving of a defective receipt, "observed the Hon'ble Sir Steuart Bayley in the Debate on the Bill "was of itself to operate as a discharge in full up to the date of the receipt. The presumption now given is nothing if the zemindar can shew that the receipt is not an acquittance in full or that the particulars required have been *substantially* given, it will only be in the case of wilful omission that the presumption will arise."

Of course the Section will not apply when rent is remitted by a postal money order. Section 11 of Act VIII. of 1869 (B. C.) enacted.

"And every under-tenant from whom a receipt is withheld for any sum of money paid by him as rent shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so exacted or paid. Receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid, and any refusal to make such specification shall be held to be a withholding of a receipt."

Cl. (3) says that the receipt shall specify such of the particulars specified in the form given in the Schedule as can be specified by the landlord, suppose that the landlord or his agent, as happens to be the case in many estates, does not know accurately the area of a raiyat's holding, and this item is omitted, will the presumption embodied in Cl. (4) arise? It is submitted it ought to be raised only in cases where the landlord or his agent *wilfully* or *fraudulently* omits to insert the particulars required by the section.

In estates which have not been measured recently, and where no written engagements have been exchanged, there will be great difficulty in complying with the requirements of the law as to the granting of receipts.

57. *(1)* Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year signed by the landlord.

(2) When the landlord does not so admit, the tenants shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account specifying the several particulars shewn in the form of account given in Schedule II. to this Act or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.

58. *(1)* If a landlord; without reasonable cause, refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the

tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent as the Court thinks fit.

(2) If a landlord, without reasonable cause, refuses or neglects to deliver to a tenant demanding the same, either the receipt in full discharge, or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord, without reasonable cause, fails to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

The period originally fixed in sub-section (1) was six months ; the change was made on the motion of the Hon'ble Mr. Gibbon. It will be observed that the section does not make the mere "refusal or neglect to deliver," but "refusal or neglect to deliver without reasonable cause," punishable. An agent's laches will probably be held refusal or neglect of the landlord within the meaning of the Section.

The words "without reasonable cause" in sub-sections (1) (2) and (3) were inserted on the motion of the Hon'ble Sir Steuart Bayley.

The word "punished" would appear to remove the cognizance of a case under sub-clause (3) from the jurisdiction of the Civil Court. The result will be that if the tenant wishes to recover a penalty, he will have to go to the Civil Court, but if he wishes to get his landlord fined, he will have to give information to the magistrate having local jurisdiction.

Local Government to prepare forms of receipt and account.

59. *(1)* The Local Government shall cause to be prepared, and kept for sale to landlords at all sub-divisional offices, forms of receipts with counterfoils, and of statements of account suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

Effect of receipt by registered proprietor, manager, or mortgagee.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or

mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager, or mortgagee.

See Section 79 Act VII. of 1876 B. C., which contain similar provisions, except that the words "authorized agent" do not appear there.

Deposit of rent.

Application to deposit rent in Court.

61. (1) In any of the following cases, namely:—

(*a*) when a tenant tenders money on account of rent, and the landlord refuses to receive it, or refuses to grant a receipt for it;

(*b*) when a tenant, bound to pay money on account of rent, has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(*c*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or

(*d*) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (*a*) and (*b*), the name of the person to whose credit the deposit is to be entered.

in case (*c*), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (*d*), the names of the person to whom the rent was last paid, and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule directs.

The former law as to deposits was contained in Sections 46 and 47 of Act VIII. of 1869 (B. C.) Section 46 ran as follows :—

"If any under-tenant or ryot shall, at the mal kutchery for the receipt of rents or other place where the rents of the land or other immoveable property held or cultivated by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender to the zemindar or other person in receipt of the rent of such land, and if the amount so tendered shall not be accepted and a receipt in full forthwith granted, it shall be lawful for the under-tenant or ryot, without any suit having been instituted against him, to deposit such amount in the Court having jurisdiction to entertain a suit for such rent to the credit of the zemindar or other person aforesaid, and such deposit shall, so far as the under-tenant or the ryot, and all persons claiming through or under him are concerned, in all respects operate as, and have the full effect of, a payment then made by the under-tenant or ryot of the amount deposited to such zemindar or other person."

The changes introduced are (1) enlargement of the grounds upon which deposits can be made, clauses (*b*), (*c*), and (*d*), (2) power of the Court to pay away or retain the deposit, (3) provision for refund to the depositor (Section 64)

From the language of Section 65, it appears that the word tenant would include a permanent tenure-holder.

In Thakoor Doss Gossain *v.* Pearymohun Mookerjee, 22 W. R. 431 (Jackson and MacDonell J. J.) it was held that the word "under-tenant" in Section 46 of Act VIII. of 1869 B. C. applied to a Patnidar.

The Rent Commission observe in their Report :

"Under the existing law there is only one case in which rent can be deposited, namely when the tenant has tendered the rent to his landlord, and the landlord has refused to receive it. We have retained this and have provided for two other cases (1) when the rent is payable to co-partners who have not appointed, and on behalf of whom the District Judge has not appointed a common manager, and the tenant is unable to obtain their joint receipt; (2) when in consequence of a disputed succession or other cause, the tenant entertains a *bonâ fide* doubt, as to who is entitled to the rent."—Report, p. 12.

Receipt granted by Court for rent deposited, to be a valid acquittance.

62. (*1*) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive

the rent, and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant, and deposited as aforesaid, in the same manner, and to the same extent as if that amount of rent had been received—

in cases (*a*) and (*b*) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, by the co-sharers to whom the rent is due; and

in case (*d*) of that section, by the person entitled to the rent.

Cl. (1.) "If it appears to the Court," *i. e.* appears from the application under section 61, it is doubtful whether the Court can examine the applicant or take other evidence.

Notification of receipt of deposit.

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

(2) If the amount of the deposit is not paid away, under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (*a*) and (*b*) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office, or in some conspicuous place in the village in which the holding is situate; and

in case (*d*) of that section, cause a like notice to be served free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

Cl. (*d*) "Every person who it has reason to believe claims or is entitled to the deposit." The court will have probably to gather its grounds of "belief" from the application.

Payment or refund of deposit.

64. (*1*) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(*2*) The payment may, if the Local Government so direct, be made by postal money-order.

(*3*) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application, and on his returning the receipt given by the Court with which the rent was deposited.

(*4*) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Arrears of rent.

Liability to sale for arrears in case of tenure holding at fixed rates and occupancy-holding.

65. Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates, or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable, and the rent shall be a first charge thereon.

Tenure-holders, raiyats holding at fixed rates, and occupancy raiyats are protected from ejectment with or without suit.

Non-occupancy raiyats are liable to ejectment by suit.

In Olam Mundul *v.* Golap Soonderi Dassee, 10 Cl. R. 499, where the husband of the plaintiff had merely a right of occupancy, and after his death, the plaintiff did not pay rent for five years, and the landlord re-entered and settled the land with another tenant, it was held that Sec. 22 Act 8 of 1869 B. C., the analogous section of the old law, applied only where there was a *subsisting* right of occupancy, and that "distinct abandonment and cessation to pay rent disentitle the tenant from enforcing the rights which he may have formerly enjoyed." See I. L. R., 4 Cal. 895.

Ejectment for arrears in case of non-occupancy-holding or under-raiyat's holding.

66. (*1*) When an arrear of rent remains due in respect of the holding of a non-occupancy-raiyat or an under-raiyat at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fasli or Amli year prevails, the

landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent, a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into court within fifteen days from the date of the decree, of when the court is closed on the fifteenth day on the day on which the court re-opens.

(3) The Court may for special reasons extend the period of fifteen days mentioned in this Section.

Sub-Section (3) is a new provision.

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

This section is an innovation. The former law legalized charge of interest from the date of default in the payment of every instalment of interest. Under the Act, interest will have to be charged only from *the expiration of the quarter* during which rent falls due.

68. (1) If in any suit brought for the recovery of arrear of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit.

Provided that interest shall not be decreed when damages are awarded under this section.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the court may award to the defendant, by way of damages such sum not exceeding twenty-five per centum on the whole amount claimed by the plaintiffs as it thinks fit.

PRODUCE RENTS.

Order for appraising or dividing produce.

69. *(1)* where rent is taken by appraisement or division of the produce,—

(*a*) If either the landlord or the tenant neglects to attend either personally or by agent at the proper time for making the appraisement or division, or

(*b*) if there is a dispute about the quantity, value or division of the produce,

The Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order, appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the district or sub-divisional Magistrate the making of the order would be likely to prevent a breach of the peace. Where a Collector appoints an officer under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected.

Cl. (1) refers to the two well known modes of receiving rents in kind prevalent in Behar *danabundi* or appraisement, in which the crops on the ground are estimated, and the landlord receives his share (generally nine-sixteenths) according to the estimate, an account is prepared of the estimated yield, this is called *khusra danabundi*.

The other mode is that of *agorebattai*, literally watch and divide, from *agora*, watch and *bat* to divide, *i.e*, where the division of produce is made on the threshing floor. See sections 84, 85 and 86 of the Bill, prepared by the Rent Commission which contained the groundwork of Sections 62, 70 and 71 of the Act.

The Commission observed in para. 155 of their Report, a "a majority of us think that the abuses incident to the receipt of rent in kind can best be obviated by its commutation into a money rent, and that the option given to the people of so converting, is calculated to encourage agriculture. Rent Commission's Report, Vol. I. p. 70.

Procedure where officer appointed.

70. *(1)* When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made, but if either the landlord or the tenant fails to attend, either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard, and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but subject as aforesaid, his order shall be final, and shall, on application to a Civil Court by the landlord or the tenant, be enforcable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

Rights and liabilities as to possession of crop.

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry, without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce

shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Liability for rent on change of landlord or after transfer of tenure or holding.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

72. (*1*) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer, and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(*2*) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants, published in the prescribed manner, shall be a sufficient notice for the purposes of this section.

Liability for rent after transfer of occupancy-holding.

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

Illegal Cesses, &c.

Abwab, &c. illegal.

74. All impositions upon tenants under the denomination of *abwáb, for mahtut,* or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations or the payment of such shall be void.

The following extracts from the debate on the Bill would best shew the intention of the Legislature in framing this and the next section. The Hon. Baboo Peary Mohun Mukerji moved that to Section 74 an exception be added to this effect, namely,—

"Bonus or Salami paid to the landlord by the raiyat, in consideration of the former allowing the latter to do an act which he is not lawfully entitled to do, shall not be deemed an imposition within the meaning of this Section."

Hon'ble members would, he thought, agree to the principle of this amendment. Considering the stringent nature of the provision contained in Section 74, and the heavy penalty provided for all impositions of illegal cesses, it was necessary that express exception should be made for payments made by the tenant, in addition to actual rent, which did not possibly come under the designation of illegal cesses. The bonus paid by the raiyat, for instance, for taking earth for manufacturing bricks, or for cutting timber where he has not the right to do so, was no illegal cess.

The Hon. Sir Steuart Bayley said that the clause had been considered, and in principle not objected to, but there were grave reasons for retaining

it. The Committee had retained the substantial law in the same form as it was in this section, and therefore whatever judgments of courts on it had already been passed would still apply. What was illegal would still be illegal, and what was legal would still remain so. For these reasons he thought the amendment should not be accepted by the Council."

In Orjoon Sahoo *v.* Anund Singh, 10 W. R. 257, it was ruled that although the tenant had been adjudged to pay a certain cess one year, that was no reason why he should be compelled to pay it every year. Where however cesses were fixed and uniform, and were paid from year to year. It was held the tenant was bound to pay them. Boodhna Orwan Mohton *v.* Jemadar Babu Juggeshor Dyal Singh, 24 W. R. 4.

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

Definition of "improvement."

76. (*1*) For the purposes of this Act the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding, and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(*2*) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:—

(*a*) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b*) the preparation of land for irrigation;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

(*f*) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act, if it substantially diminishes the value of his landlord's property.

Right to make improvements in case of holding at fixed rates and occupancy-holding.

77. (*1*) Where a raiyat holds at fixed rates or has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(*2*) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

Collector to decide question as to right to make improvement, &c.

78. If a question arises between the raiyat and his landlord—

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

Right to make improvements in case of non-occupancy-holding.

79. (*1*) A non-occupancy-raiyat shall be entitled to construct, maintain, and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(*2*) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a re-

quest in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

Registration of landlord's improvements.

80. (*1*) A landlord may, by application to such revenue-officer as the Local Government may appoint, register any improvement which he has lawfully made, or which has been lawfully made at his expense, or which he has assisted a tenant in making.

(*2*) The application shall be in such form, shall contain such information, and shall be verified in such manner by local enquiry or otherwise as the Local Government from time to time by rule directs.

(*3*) The officer receiving the application may reject it if it has not been made within twelve months.

(*a*) In the case of improvements made before the commencement of this Act, from the commencement of this Act.

(*b*) In the case of improvements made after the commecement of this Act—from the date of the completion of the work.

Application to record evidence as to improvement.

81. (*1*) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(*2*) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

Compensation for raiyats' improvements.

82. (*1*) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the 2nd day of March 1883, and the commencement of this Act, shall be deemed to have been made in accordance with this Act.

(5) The local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

Principle on which compensation is to be estimated.

83. (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

(a) to the amount by which the value, or the produce of the holding, or the value of that produce, is increased by the improvement;

(b) to the condition of the improvement, and the probable duration of its effects;

(c) to the labour and capital required for the making of such an improvement;

(d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Sections 6 and 7 Land Law (Ireland) Act 1881 (44 and 45 Vict. C. 49) embody the present law as regards compensation for tenants' improvements in Ireland :—

"There shall be repealed as much of section three of the Landlord and Tenant (Ireland) Act, 1870* as provides for the scale of compensation, and so much of the same section as declares that in no case shall the compensation exceed the sum of two hundred and fifty pounds, and so much of the same section as declares that a tenant in a higher class of the scale may at his option claim compensation under a lower class, and so much of the same section as prohibits tenants of holdings valued at such sums as are in the said section mentioned, and making such claims for compensation for disturbance as are in the said section mentioned, from being entitled to make a separate or additional claim for improvements other than permanent buildings and reclamation of waste land, and the said section three shall hereafter be read as if from such section were omitted the words "for the loss which the Court shall find to be sustained by him by reason of quitting his holding,"

So that the said section shall be read as providing that the tenant therein mentioned shall be entitled to such compensation as the Court, in view of the circumstances of the case, shall think just, subject to the scale of compensation hereinafter mentioned. The compensation payable under the said section in the case of a tenant disturbed in his holding by the act of a landlord after the passing of this Act, shall be as follows in the case of holdings :—

Where the rent is thirty pounds or under, a sum not exceeding seven years' rent.

Where the rent is above thirty pounds and not exceeding fifty pounds, a sum not exceeding five years' rent.

Where the rent is above fifty pounds and not exceeding one hundred pounds, a sum not exceeding four years' rent.

Where the rent is above one hundred pounds and not exceeding three hundred pounds, a sum not exceeding three years' rent.

Where the rent is above three hundred pounds and not exceeding five hundred pounds, a sum not exceeding two years' rent.

Where the rent is above five hundred pounds, a sum not exceeding one year's rent.

Any tenant in a higher class of the scale may, at his option, claim compensation under a lower class, provided such compensation shall not exceed the sum to which he would be entitled under such lower class on the assumption that the rent of his holding was reduced to the sum (or where two sums are mentioned, the higher sum) stated in such lower class.

From and after the passing of this Act, the thirteenth section of the Landlord and Tenant (Ireland) Act 1870, shall be and the same is hereby repealed.

Amendment of Law as to Compensation for Improvements.

Section 7. A tenant, on quitting the holding of which he is tenant, shall not be deprived of his right to receive compensation for improvements under the Landlord and Tenant (Ireland) Act 1870, by reason only of the determination by surrender or otherwise of the

* For extracts from the Irish Land Act 1870, see Appendix.

tenancy subsisting at the time when such improvements were made by such tenant or his predecessors in title, and the acceptance by him or them of a new tenancy.

Where in tracing a title for the purpose of obtaining compensation for improvements, it appears that an outgoing tenant has surrendered his tenancy in order that some other person may be accepted by the landlord as tenant in his place, and such other person is so accepted as tenant, the outgoing tenant shall not be precluded from being deemed the predecessor in title of the incoming tenant by reason only of such surrender of tenancy by him.

The court, in adjudicating on a claim for compensation for improvements made before any such change of tenancy or of tenants, shall take into consideration all the circumstances under which such change took place, and shall admit, reduce, or disallow altogether such claim as to the Court may seem just.

A flax-scutching mill otherwise suitable to the holding on which it is erected, shall not be deemed to be unsuitable to the holding on which it is erected, by reason only that it is available for purposes beyond those of the holding on which it is situate.

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding,

and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose, having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose,

and on being satisfied, on the certificate of the Collector, that the purpose is reasonable and sufficient,

authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

Sub-letting.

Restrictions on sub-letting.

85. (*1*) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(*2*) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(*3*) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

The right to sub-let hitherto recognized as belonging only to occupancy tenants has been extended to all raiyats, occupancy and non-occupancy. The restrictions are, when the sub-lease is granted without the landlord's consent, that (1) it shall not extend for more than nine years. (2) That it should be registered. The consent may be express or implied.

The rights of an under-tenant are not transferable without his lessor's consent (Garth C. J. and Jackson J). Bonmali Bajadur *v.* Koylash Chunder Mojoomdar, I. L. R. 4 Cal. 135.

Surrender and abandonment.

Surrender.

86. (*1*) A raiyat, not bound by a lease or other agreement for a fixed period, may, at the end of any agricultural year, surrender his holding.

(*2*) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(*3* When a raiyat has surrendered his holding, the Court shall in the following cases for the purpose of sub-section (2) presume, until the contrary is shown, that such notice was so given, namely:—

(*a*) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(*b*) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(*4*) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(*5*) When a raiyat has surrendered his holding, the landlord may enter on the holding, and either let it to another tenant or take it into cultivation himself.

In the case of Judoonath Ghose *v.* Schoene, Kilburn & Co., I. L. R. 9 Cal. 671, where the defendants held a *dar-Maurosi Mokurari* tenure, the question arose whether a relinquishment was valid, and would be binding on the landlord, and it was held (Garth C. J. and Field J.) that it was not: see also Heeralal Paul *v.* Neel Moni Pal, 20 W. R. 383.

Cl. (4) The Civil Court, through which the notice may be given, is the Munsiff's Court.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(7) Save as provided in the last foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

The Hon'ble Sir Steuart Bayley observed in the course of debate on the Bill. "The question is when the raiyat has surrendered, is he to be held liable for the payment of the next year's rent. If he has given three months notice the answer is no, if he has not given it, the answer is yes, but we look to the object with which three month's notice is required, and we say if he has left the village or if he has exchanged his holding for another, then the landlord has already received the information which the notice is intended to secure, and it is here that the presumption comes in. The presumption is not a presumption of surrender but of service of notice. The raiyat will then be able to say that he gave notice, because the landlord has let him another piece of land in the same villages.

The former law was Section 20, Act VIII (B. C.) of 1869 "any raiyat, who desires to relinquish the land held or cultivated by him, shall be at liberty to do so provided he gives notice of his intention in writing, to the person entitled to the rent of the land or his authorized agent, in districts or parts of districts where the Fasli year prevails, in or before the month of Jeit and in districts or parts of districts where the Bengali year prevails in or before the month of Pous of the year preceding that in which the relinquishment is to have effect. If he fails to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land. If the person entitled to the rent of the land, or his agent, refuse to receive any such notice, and to sign a receipt for the same, the raiyat may make an application on plain paper to the Collector in whose jurisdiction the land is situated, who shall thereupon cause the notice to be served on such person or his agent in the manner provided in Section XIV.—See Moniruddin *v.* Mohomed Ali, 6 W. R. p. 67. Nuddear Chand Paddar *v.* Modhu Sudon Dey, 7 W. R. p. 153. 12 W. R. p. 304. Mutty Soonar *v.* Gondur Sonar, 20 W. R. p. 129. Ram Chung *v.* Gora Chand Chung, 24 W. R. p. 344.

A tenure under a dar-maurosi mokurari lease of land which is not let for agricultural purposes cannot be put an end to by a mere relinquishment on the part of the lessee, although after notice to the landlord, the principle laid down in the case of Heeralul Pal *v.* Neelmony Pal 20 W. R. 383 where it was held that a Patnidar can not of his own option relinquish his tenure is applicable to all intermediate tenures between the zemindar and the cultivator of the soil, except those held on farming leases, Judoonath Ghose *v.* Schoene, Kilburn & Co., I. L. R., 9 Cal. 671.

Abandonment.

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either

by himself or by some other person, the landlord may at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding, and let it to another tenant or take it into cultivation himself.

(*2*) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned, and is about to enter on it accordingly; and the Collector shall cause the notice to be published in such manner as the Local Government, by rule, directs.

(*3*) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(*4*) Where the whole or part of a holding has been sub-let by a registered instrument, the land-lord shall, before entering under the section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding, and let it to another tenant or cultivate it himself as provided in sub-sections (*1*) and (*2*).

Sub-division of tenancy.

Division of tenancy not binding on landlord without his consent.

88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.

The existence of a custom in a particular district by which rights of occupancy are transferable will not justify sub-division of a holding, and if the tenant sub-divides and transfers to different persons, the landlord is entitled to re-enter Tirthanund Thakoor *v.* Mutty Lall Misser, I. L. R, 3 Cal, 774.

Ejectment.

89. No tenant shall be ejected from his tenure or holding except in excution of a decree. No ejectment except in execution of decree.

Under the corresponding provisions of Act 8 of 1869 B. C. a suit will lie for ejectment for arrears of rent due on a bhaoli tenure, Kishengopal Marwar v. Barnes, I. L. R. 2 Cal. 374.

MEASUREMENTS.

90. (*1*) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue. Landlord's right to measure land.

(*2*) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in 10 years, except in the following cases (namely):—

(*a*) where the area of the tenure or holding is liable, by reason of alluvion or deluvion, to vary from year to year, and the rent payable depends on the area;

(*b*) where the area under cultivation is liable to vary from year to year, and the rent payable depends on the area under cultivation;

(*c*) where the landlord is purchaser otherwise than by voluntary transfer, and not more than two years have elapsed since the date of his entry under the purchase.

(*3*) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

It has been held under Sec. 6 Act VI. of 1862 that a fractional owner of an estate is not entitled to measure lands, Mulook Chand 16 W. R., 126, this opinion was however based on the language of the Act, see also Santeeram Panja *v.* Bykunt Parya, 19 W. R. 280, Peary Mohun Mookerjee *v.* Rajkristo Mookerjee, 20 W. R. 285, Eshan Chunder Roy *v.* Busaruddeen 5 L. S. R. 132. All these cases seem to lay down the rule that the right to measure in a joint estate must be exercised by all the co-owners jointly; but in Abdool Hossain *v.* Lall Chand Mahton 13 C. R. R. 313, it was held that a single co-sharer is competent to apply for measurement under section 38 Act 8 of 1869 B. C., if he makes his co-sharers parties to the proceeding.

If an estate be let to a number of tenure-holders, that circumstance was held upon a construction of the words "entitled to receive the rents" not to be a bar to the exercise of the right. Brojendro Coomer Roy Chowdry *v.* Denobundhu Acharjee, 9 C. L. R. 444.

The former law was contained in section 25 Act 8 of 1869 which enacted that "every proprietor of an estate or tenure, or the person in receipt of the rents of an estate or tenure has the right of making a general survey and measurement of the lands comprised in such estate or tenure or any part thereof unless restrained from so doing by express engagement with the occupants of the lands."

The changes introduced are (1) the landlord is not entitled to measure land exempt from the payment of revenue. (2) is not entitled to measure more than once in ten years, except with the permission of the Collector or the consent of the tenant.

Power for Court to order tenant to attend and point out boundaries.

91. (*1*) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(*2*) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

See Section 37 Act 8 of 1869 B. C. The penalty attached to the tenant's refusal or negligence to attend at the time of measurement was, that it was not competent to him to contest the correctness of the measurement made or of the proceedings held in his absence. Under the present law a presumption is simply raised that the map or other record of the boundaries or of the measurement is correct until the contrary is shown.

Standard of measurement.

92. (*1*) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(*2*) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(*3*) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager.

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may, on the application in case (*a*) of the Collector, and in case *(b)* of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:—

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

Act VII (B. C.) of 1876.

Section 93, Regulation V of 1812, section 26 provided that

"In any case in which it is shewn to the satisfaction of a District Judge that inconvenience to the public or injury to private rights has ensued, or is likely to ensue from disputes subsisting among the proprietors of a joint undivided estate, it shall be competent to such judge upon the application of the Revenue authorities or of any individual having an interest in such estate to appoint a person duly qualified and under proper security to manage the estate, that is to collect its rents, and discharge the public revenue and provide for the cultivation and future improvement of the estate." And Section 29 laid down—

"It shall also be competent to such judge to remove such manager, if the Revenue authorities or any individual having an interest in the estate be at any subsequent time dissatisfied with his conduct, and representing the circumstances of his case, move such judge for his removal."

Power to order them to appoint a manager if cause is not shown.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

power to appoint manager if order is not obeyed.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge,

the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

(*a*) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(*b*) in any case appoint a manager.

Power to nominate person to act in all cases under clause (*b*) of last section.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (*b*) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

Act IX (B. C.) of 1879.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

Provisions applicable to manager.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(*2*) He shall give such security for the proper discharge of his duties as the District Judge directs.

(*3*) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application to which the proprietors could make under section 103.

He shall be removable by the order of the District Judge, and not otherwise.

Cl. (3) In joint estates where collections are made jointly, great difficulties have arisen under the present state of the case-law, as to the exercise of the right to sue by one co-sharer to recover arrears of rent or to enhance. With regard to the latter point, it has been held that if a landlord of a specific share of an estate proves that he has collected his rent separately or that there exists an express agreement on the part of his tenants to pay him rent separately, he will be entitled to sue to enhance without making his co-sharers parties to the suit. Ganga Narain Das *v.* Saroda Mohan Roy, 12 W. R. 30. Rakhal Chandra Roy Chowdry *v.* Mohabbut Khan, 25 W. R. 221. So would an Ijardar of a definite share, Durgaprosad Mythee *vs.* Joynarain Hazra and Gani Mohomed *v.* Moran 2 C. L. R. 370 I. L. R. 4 Cal. 96. But in the Full Bench Case of Chuni Sing *v.* Heera Mahto. I. L. R. 4 Cal. 633, it was ruled that a notice for enhancement issued by one co-sharer may be the basis of a suit for enhancement if all the co-sharers join in it. In Bidhoo Bhusan Basu *v.* Kamoroddi Mundul, I. L. R. 9 Cal. 864, the notice was issued at the instance of one co-sharer, and the suit to enhance instituted by him alone. His other co-sharer was however made a party to the suit, and it was held it might be maintained.

As regards the right to recover arrears of rent the following cases may be consulted; Durga Churn Sarma *v.* Jampa Dasi, 21 W. R. 46, where it appears the owners were accustomed to receive their rents jointly through a joint agent, afterwards all the co-sharers realised from the tenant their separate shares of rent, and caused him to withhold payment of the plaintiff's share. It was ruled, that he was entitled to sue. Jadoo Sat *v.* Kadombini Dossee I. L. R. 7 Cal. 150 Tara Chunder Banerjee *v.* Ameer Mundle 22, W. R. 394 and Guni Mahomed *v.* Moran already cited.

Power to restore management to co-owners.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Power to make rules.

100. The High Court may, from time to time, make rules defining the powers and duties of managers under the foregoing sections.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Power to order survey and preparation of record-of-rights.

101. (1) The Local Government may, in any case with the previous sanction of the Governor-General in Council, and may,

if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a Revenue-officer.

(2) The cases in which an order may be made under this section without the previous sanction of the Governor-General in Council are the following, namely :—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs ;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally ;

(*c*) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards ; and

(*d*) where a settlement of revenue is being made in respect of the local area.

(*3*) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

This Chapter is a most important one, its provisions (Sections 101-115) seem substantially to be a re-production of those of Regulation III of 1872 which was passed by the Government of India for the peace and good Government of the Sonthal Pergunnahs on the recommendation of Sir George Campbell

Referring to the proposition of the Government of India on the subject of this Chapter, the Secretary of State observed in his despatch—

'While fully admitting the advantages which would attend the establishment of village records and accounts, the formation of a record-of-rights, and the introduction of a field survey, I cannot avoid the apprehension that the difficulties of carrying out these measures in those parts of Bengal in which village accounts and accountants if they ever existed, have long ago entirely disappeared, even from tradition and remembrance, may prove greater than you anticipate. Your present proposal, however, merely contemplates an experimental commencement of the work in the Patna Division of the Province of Behar, where the need for it is, you think, most pressing, and the conditions least unfavourable ; and to this I will make no objection.'

In the course of debate which arose on the motion of the Hon'ble Peary Mohun Mookerjee for the omission of this Chapter from the Bill, His Honor the Lieutenant-Governor observed—

"With the sanction of the Secretary of State, and of the Government of India, the utmost we should attempt in the first instance would be one single district, and we shall be guided much by the success we meet with in that district, before proceeding further."

Sir Steuart Bayley said—

"You have heard just now from His Honor the Lieutenant-Governor that this order of the Secretary of State is still in full force, and that at present he has no intention of going beyond it. Certain provisions of this chapter are of course applicable everywhere. A landlord in Bengal proper may apply to have these settlement-operations brought into effect in regard to his estate or a portion of his estate; or on a riot taking place in any single landlord's estate, the Local Government may apply to the Government of India for permission to put it in force in that estate. But with regard to a general record-of-rights, not only is it distinctly understood that the Lieutenant-Governor will apply it only in some one selected district in Behar and abide by the results of that experiment, but it is also certain that as the Secretary of State has not sanctioned anything beyond that, nothing beyond it will be carried out until the Secretary of State does sanction it. The result I am unwilling to prophesy, but I do say that, as in the neighbouring district of Benares, the operation has been most successfully carried out without much friction and has been the salvation of the tenant, a similar operation may be conducted in the province of Behar, which is in almost all respects similar to the districts bordering it in the North-Western Provinces. I do not see why what has been worked so successfully in the North-Western Provinces should be inapplicable to Behar.

His Excellency THE PRESIDENT observed that he had been very much struck by the almost complete unanimity of opinion which prevailed in the Council as to the utility of this chapter. At the same time he was perfectly able to comprehend the natural anxiety which its unreserved application over very extensive areas would occasion both to the raiyats and the zemindars. Regarding the question in the abstract, it was perfectly obvious that one of the first steps towards the cessation of litigation and ill-feeling between two antagonistic interests, was that they should each know exactly what belonged to them; therefore no one, HIS EXCELLENCY imagined, not even the hon'ble member himself, could in theory be opposed to the introduction of this chapter. At the same time HIS EXCELLENCY could assure the hon'ble member that, not only in deference to the suggestions made to them by the Secretary of State, but also from their own appreciation of the exigencies of the case, the Government of India would be indisposed to consent to the application of the sections referred to otherwise than in the sense and spirit recommended by Lord Kimberley. By applying the machinery of the chapter to a special and limited area in a tentative method, they would be able to observe how the clauses were likely to work, and there was every hope that by that cautious method of procedure they would be able to obviate those objections to which the hon'ble member had referred.

Particulars to be recorded.

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:—

(*a*) the name of each tenant;

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(*c*) the situation, quantity and boundaries of the land held by him;

(*d*) the name of his landlord;

(*e*) the rent payable;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;

If the particulars specified in Cl. (b) are to be recorded, it is apprehended that the investigation which the settlement officer will have to make will involve the whole of the agricultural population of a tract of country in ruinous litigation. The nature of such investigation will depend very much on the terms of the order issued by the Local Government; supposing no "other particulars" are mentioned therein, Cl. (b) read along with Section 111, would seem to bring within the scope of the enquiry the class to which a tenant belongs, and in case of a tenure-holder, the permanance or otherwise of his tenure, and its liability to enhancement. All questions in fact which pertain to the *status* of the tenant would be within the competence of the settlement court to determine.

Power for Revenue-officer to record particulars on application of proprietor or tenureholder.

103. On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing Section with respect to the estate or tenure or any part thereof.

104. *(1)* When in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

(2) Where it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent or either the landlord or the tenant applies for a settlement of rent or

in any case under section 101 sub-section (2) clause (*b*), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

(3) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act, for the guidance of the Civil Court in increasing or reducing rents as the case may be.

Publication of record.

105. *(1)* When the Revenue-officer has completed a record made under this chapter, he shall cause a draft thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

(2) After the expiration of this period, the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

The publication shall be in the mode prescribed by the Local Government, probably by a copy of the draft record being stuck up in some conspicuous place or places in the villages concerned, as also in the office of the landlord of the estate in which the survey takes place.

Procedure in case of dispute as to entries in record.

106. If at any time before the final publication of the record under the last foregoing section, a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

In case of dispute about the correctness of an entry (not being an entry of rent) or the propriety of an omission, the Revenue Officer is to hear and decide according to the procedure laid down in Act XIV. of 1882.

Procedure to be adopted by Revenue-officer.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

The proceedings before the Revenue-officer will be governed, it seems, by the rules for the trial, and adjudication of Civil suits, and the provisions of Chapters 5 to 18, Act 14 of 1882 will be applicable subject to any modifications that may be made by the Local Government.

Appeals from decisions of Revenue-officer.

108. *(1)* The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under this chapter.

(2) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under this chapter, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII. of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter:

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained or settled under section 104.

Cl. (2.) Appeals from original decrees are now regulated by the rules laid down in Chapter 41 of the Code of Civil Procedure, sections 540 to 583.

The present law of second or special appeals limits the interference of the court of second appeal to the following cases only :—

"(*a*) if the decision (of the first Court) is contrary to some specified law or usage having the force of law.

(*b*) if the decision has failed to determine some material issue of law or usage having the force of law.

(*c*) If there is a substantial error or defect in the procedure as prescribed by this Code (Act XIV. of 1882), or by any other law which may possibly have produced error or defect in the decision of the case on the merits."

Undisputed entries in record to be presumptive evidence.

109. *(1)* Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

(2) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

Time at which settlement of rent is to take effect.

110. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

Stay of proceedings in Civil Court during preparation of record.

111. When an order has been made under section 101,—

(a) a Civil Court shall not, until the final publication of the record, entertain a suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(b) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a Civil Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

Power to authorize a special settlement in special cases.

112. *(1)* The Local Government, with the previous sanction of the Governor-General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely:—

(a) power to settle all rents;

(b) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rent would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor-General in Council.

The power invested in the Local Government of ordering a special settlement under this section for reduction of rents is to be exercised only when it is necessary "in the interests of public order or of the local welfare." These words are very comprehensive, but it is submitted reduction of existing rents is such an exceptional course that it should be resorted to only in cases where such rents are conclusively proved to be unjust and inequitable, and the presumption should always be that they are fair and just.

Cl. (3) embodies the amendment moved by the Hon'ble Rao Saheb Vishvanath Narayan Mandlik.

Period for which rents as settled are to remain unaltered.

113. When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding, for fifteen years, and in the case of a non-occupancy-holding, if the rent is settled in any case under section 112 or on the application of the landlord under section 104, for five years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

Expenses of proceeding under chapter.

114. Where an order is made under this chapter in any case except under section 101, sub-section (2,) clause (*d*), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of these expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

Presumption as to fixity of rent not to apply where record has been prepared

115. When the particulars mentioned in section 102, clause (*b*), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

CHAPTER XI.

RECORD OF PROPRIETORS' PRIVATE LANDS.

Saving as to khámár land.

116. Nothing in Chapter V. shall confer a right of occupancy in, and nothing in Chapter VI. shall apply to a proprietor's private lands known in Bengal as khámár, nij-jot, and in Behar as zirát, nij, sír or kámát, where any such land is held under a lease for a term of years or lease from year to year.

A landlord seeking to obtain an enhanced rate of rent on account of *neej-jote* held by a tenant without a right of occupancy has no right to obtain a judicial assessment, he can serve his tenant with notice to quit unless he agrees to pay the rent required, and if the tenant continues in occupation, he must be taken by implication to pay the enhanced rent. Janoo Mundre *v.* Brijoo Singh, 22 W. R. 548.

The Chief Justice of the Calcutta High Court, Sir Richard Garth, in his Minute, 13th September 1884, published in the extra Supplement to the *Gazette of India*, 11th October 1884, observes with

reference to the provisions of this chapter—"I cannot see why any attempt should be made to contract the right of landlords to the lands of that description (khámár lands), or to leave the determination of those rights to the executive authorities instead of to the courts of law." And Mr. Justice Field says in his Minute, I am afraid the provisions of this section will be used by raiyats to harass their landlords. I may observe that the Bill speaks only of a *proprietor's* private lands, but where the zemindar has virtually become an annuitant and the real proprietary interest has passed to a tenure-holder as in the case of *patni* tenures, the khámár land belongs to the tenureholder." Bearing in mind the definition of the word "proprietor," and the fact that the Act makes use of the word "tenure-holder" to designate owners of all intermediate interests between the zemindar and the raiyat, it is very doubtful whether the provisions of the Chapter would apply to patnidars and other middlemen, or farmers under them.

Power for Government to order survey and record of proprietor's private lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area, which are a proprietor's private lands within the meaning of the last foregoing section.

Power for Revenue-officer to record private land on application of proprietor or tenant.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer any, subject to and in accordance with rules made in this behalf by Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Procedure for recording private land.

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105, 106, 108 and 109 shall apply.

Rules for determination of proprietor's private land.

120. (*1*) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as khámár, zirát, sír, nij, nij-jot or kámát by the proprietor himself, with his own stock or by his own servants or by hired labour, for twelve continuous years immediately before the passing of this Act; and

(*b*) cultivated land which is recognized by village usage as proprietor's khámár, zirát, sír, nij-jot or kámát.

(*2*) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom and to the question whether the land was

before the second day of March 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XII.

DISTRAINT.

Cases in which an application for distraint may be made.

121. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefore by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining while in the possession of the cultivator.

(a) any crops or other produce of the earth standing or ungathered on the holding;

(b) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered, and are deposited on the holding or on a threshing-floor or place for treading out grain or the like, whether in the fields or within a homestead.

Provided that an application shall not be made under this Section.

(1) By a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

(2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year unless that sum is payable under a written contract, or in consequence of a proceeding under this Act or an enactment hereby repealed, or in respect of the produce of any part of the holding

which the tenant has sublet with the written consent of the landlord.

The former law of distraint was contained in sections 68 to 101 of Act VIII. of 1869 (B. C.). Section 71 provided as follows :—

"Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act. But no such crops or products other than the produce of the land, in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce, after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act."

"The landlord may present an application," etc. The former law provided that persons "invested with the powers of distraint" might apply. The landlord's powers to distrain may, under section 187, be delegated to an agent. The crop or other products of the earth "must have been grown on the holding."

It seems from Cl. (1) of the proviso that if a shareholder registers his name as the owner of a specific share, he can apply under this section ; it was held that under section 112 of Act X. of 1859 such a course would have been illegal. "Proprietor" as defined in Act VII. of 1876 (B. C.) means "every person being in possession of an estate or revenue-free property, or of any interest in an estate or revenue-free property, as owner thereof : and includes every farmer and lessee who holds an estate or revenue-free property directly from or under the Collector."

Form of application.

122. *(1)* Every application under the last foregoing section shall specify—

(*a*) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification ;

(*b*) the name of the tenant ;

(*c*) the period in respect of which the arrear is claimed ;

(*d*) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable ;

(*e*) the nature and approximate value of the produce to be distrained ;

(*f*) the place where it is to be found, or such other particulars as may suffice for its identification ; and

(*g*) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(*2*) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints.

Section 51 of Act XIV. 1882 provides: "The plaint shall be signed by the plaintiff (in this case the applicant) and his pleader (if any) and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. Provided that if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf, Section 52. "The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true. The verification must be signed by the person making it."

Procedure on receipt of application.

123. (*1*) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(*2*) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(*3*) Where a Court cannot forthwith admit or reject an application under sub-section (*2*), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(*4*) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

Execution of order for distraint.

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is,

and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

Service of demand and account.

125. *(1)* The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

Right to reap, &c. produce.

126. *(1)* A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property, shall remain in the charge of the distraining officer or of some other person appointed by him in this behalf.

Sale proclamation to be issued unless demand is satisfied.

127. *(1)* Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained, and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction :

Provided that when the crops or products distrained, from their nature admit of being stored, but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

Place of sale.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the distraining officer is of opinion that it is likely to sell there to better advantage.

When produce may be sold standing.

129. *(1)* Crops or products which from their nature admit of being stored, shall not be sold before they are reaped or gathered and are ready for storing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

Manner of sale.

130. The property shall be sold by public auction in one or more lots, as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Postponement of sale

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next

day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Payment of purchase-money.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Certificate to be given to purchaser.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale how to be applied.

134. (*1*) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made, from time to time, by the Local Government in this behalf.

(*2*) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

Certain officers may not purchase.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Procedure where demand is paid before the sale.

136. (*1*) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same, and the distraint shall forthwith be withdrawn.

(*2*) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(*3*) A receipt granted under this section to an owner of distrained property, not being the defaulter, shall afford a full

protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under the section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant, contesting the legality of the distraint, and claiming compensation in respect of the same.

(5.) A landlord shall not be deemed to have consented to his tenant's subletting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

Amount paid by under-tenant for his lessor may be deducted from rent.

137. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

Conflict between rights of superior and inferior landlord.

138. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Distraint of property which is under attachment.

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property

without the sanction of the Court by which the order of attachment or sale was issued.

Suit for compensation for wrongful distraint.

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121 in any case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

See Huro Narain Chowdhry *v.* Sudha Kristo Bura, 4 C. L. R. 32 I. L. R. 4 Cal. 890, in which it was held that a landlord who supplies seed to his tenants upon condition that they shall cut and store the crops grown therefrom in his *chuck*, and after threshing the same shall make over to him one half of the produce, has such an interest in and dominion over the crops, as to entitle him to contest the demand of the distrainor. Where the plaintiff, after getting a distraint set aside as illegal, sued to recover value of the crops wrongfully taken by the distrainors, it was held that the Small Cause Court had no jurisdiction to entertain the suit. Hyder Ali *v.* Jafar Ali, I. L. R. 1 Cal. 183.

Power for Local Government to authorize distraint in certain cases.

141. *(1)* When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this chapter to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this chapter to the Civil Court:

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may by rule prescribe to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

Power for High Court make rules.

142. The High Court may, from time to time, make rules consistent with this Act for regulating the procedure in all cases under this chapter.

CHAPTER XIII.

JUDICIAL PROCEDURE.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

143. *(1)* The High Court may, from time to time, with the approval of the Governor-General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

Jurisdiction in proceedings under Act.

144. *(1)* The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

According to the provisions of this section, all suits and applications, with regard to tenures or holdings, the value of which, calculated in accordance with the rules laid down in the Court Fees Act of 1870, does not exceed one thousand rupees, are to be instituted and preferred in the Court of the Munsiff within whose jurisdiction the tenure or holding may be situate ; and if the value exceeds one thousand rupees, then in the court of the Subordinate Judge of the district in which the tenure or holding may lie.

The rules for valuation of suits, so far as are necessary for those under this Act, are contained in sub-section 9 of section 7 of the Court Fees Act, and are as follow :—

"In the following suits between landlord and tenant :

(*a*) for the delivery by a tenant of the counterpart of a lease.

(*b*) te enhance the rent of a tenant having a right of occupancy.

(*c*) for the delivery by a landlord of a lease.

(*d*) to contest a notice of ejectment.

(*e*) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and

(*f*) for abatement of rent :

according to amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint",

Naibs or gumashtas to be recognized agents.

145. Every náib or gumáshta of a landlord, empowered in this behalf by a written authority under the hand of the landlord, shall, for the purposes of every such suit, be deemed to be the

recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending.

Section 36 of Act XIV. of 1882 provides :—" Any appearance, application or Act in or to any Court required or authorized by law to be made or done by a party to a suit or appeal in such Court may, except when otherwise expressly provided by any law for the time being in force, be made or done by the party in person or by his recognized agent, or by a pleader duly appointed to act on his behalf.

" Provided that any appearance may be made by the party in person if the Court so direct ;" and section 37,

" The recognized agents or parties by whom such appearances, applications, and acts, may be made or done are :—

(*a.*) persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which the appearance, application or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties.

(*b*) Muktárs duly certificated under any law for the time being in force, and holding special powers-of-attorney authorizing them to do on behalf of their principals such acts as may legally be done by Mooktárs.

(*c*) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which the appearance, application and act is made or done in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts."

Special register of suits.

146. The particulars referred to in section 58 of the Code of Civil Procedure shall in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may from time to time prescribe in this behalf.

The particulars referred to in section 58 of the Code of Civil Procedure are those mentioned in section 50 of the Code, viz.—

(*a*)"The name of the Court in which the suit is brought.

(*b*) The name, description and place of residence of the plaintiff.

(*c*) The name, description and place of residence of the defendant so far as they can be ascertained.

(*d*) A plain and concise statement of the circumstances constituting the cause of action where and when it arose.

(*e*) A demand of the relief which the plaintiff claims, and

(*f*) If the plaintiff has allowed a set off or relinquished a portion of his claim the amount so allowed or relinquished"

Successive rent-suits.

147. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

Section 373: "If, at any time after the institution of the suit, the Court is satisfied, on the application of the plaintiff (*a*) that the suit must fail by reason of some formal defect, or (*b*) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject matter of the suit, or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit or abandon part of his claim without such permission, he shall be liable for such costs, as the court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others."

Procedure in rent suits.

148. The following rules shall apply to suits for the recovery of rent:—

(*a*) sections 121 to 127 (both inclusive), 129, 305 and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit;

(*b*) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification;

(*c*) the summons shall be for the final disposal of the suit unless the Court is of opinion that the summons should be for the settlement of issues only;

(*d*) the service of the summons may, if the High Court by rule either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III. of the Indian Post Office Act, 1866;

When a summons is so forwarded in a letter, and it is proved that the letter is duly posted and registered, the court may presume that the summons has been duly served.

(*e*) a written statement shall not be filed without the leave of the Court.

(*f*) The rules for recording the evidence of witnesses prescribed by section 189 of the code of Civil Proceedure shall apply whether an appeal is allowed or not

(*g*) The court may, when pasing the decree, order on the oral application of thed ecreehelder the execution there of, unless it is a decree for ejectment for arrears:

(*h*) Not withstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree, unless the landlord's interest in the land has become and is vested in him.

Sections 121 to 127 of the Code of Civil Procedure relate to the examination of parties by interrogatories, the mode of their service and the consequence of omission to answer.

Section 129 relates to the power of the Court to order discovery of documents.

Section 305 enables the Court to postpone the sale of any property if the judgment-debtor can satisfy it that the amount of the decree can be raised by mortgage, lease, or private sale thereof.

Sections 320 to 326 provide that if the Local Goverument with the previous sanction of the Governor-General in Council so order, the Collector may be invested, in regard to a specified local area, with the power of executing decrees and selling immoveable properties in satisfaction thereof.

Cl. (*d*) The power given by the section to the High Court to direct service of summons by sending it to the defendant in a registered cover should be noted.

Payment into Court of money admitted to be due to third person.

149. *(1)* When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take coghizance of the plea unles the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under subsection *(3)*.

There are two cases in which the defendant in a suit for recovery of rent is obliged to deposit money into Court to be entitled to be heard. (1.) Whereheadmits that some meney on account of rent is due from him, but not to the plaintiff, (2) where he admits a portion of the plaintiff's claim section under 150.

The amount to be deposited is the amount admitted by the tenant to be due.

Payment into Court of money admitted to be due to landlord.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Provision as to payment of portion of money.

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Court to grant receipt.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

Appeals in rent-suits.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(*a*) the decree or order is passed by a District Judge, Additional Judge, or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(*b*) the decree or oder is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question

of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

Under this section unless the decree or order decides a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant, there will be only one appeal in cases tried by a Munsiff to the District Court when the claim does not exceed one hundred rupees.

Where the claim does not exeeed one hundred rupees, and the case is transferred to the file of the District Judge, Additional Judge or Subordinate Judge, and tried by any of these officers, the decision is final.

Where the claim exceeds one hundred rupees, and the case is tried by a Munsiff, there will be a second appeal to the High Court subject to the rules laid down in Chapter XLII. of the Code of Civil Procedure.

In cases up to one hundred rupees, there will be a second appeal:

(*a*) when there is a dispute as to the amount of yearly rental.

(*b*) where the judgment has decided a question of title to land or interest in land as between adverse parties.

(*c*) when the judgment has decided a question as to the right to enhance or vary the rent of a tenant.

(*a*) is a novel provision, (*b*) and (*c*) are reproduced from Section 153 of Act X. of 1859, and Section 102 Act 8 of 1869 B.C.

See the Full Bench case of Brojo Misser *v.* Alhadi Missrani, 13 B. L. R. 376, 21 W. R. 320, Lungessur Kooer *v.* Sookha Ojha I. L. R., 3 Cal. 151. In the first of these cases it was held that an Additional Judge's Court is the Court of the District Judge within the meaning of Section 102 Act 8 of 1869 B. C. In the latter case a majority of the Full Bench decided (Jackson J. dissenting) that the terms of that Section barred a second appeal unless there existed the special conditions mentioned in the section see Doorga Narain Sen *v.* Ramlal Chutar I. L. R. 7, Cal. 330. and the cases therein quoted. Sec. also Byjinath Sahoo *v.* Ramdour Roy 7 C. L. R. 369 The language of the proviso giving the district Judge power to interfere is the same as that of section 622 of the Code of Civil Procedure. Their Lordships of the Privy Council, in construing that Section in Ameer Hassan Khan *v.* Sheo Buksh J. L. R. 11 Cal. 6, lay down the rule that where a court having jurisdection decides wrongly, it can not be said to exercise its Jurisdiction "illegally or with materiaially irregularity.

Date from which decree for enchancement takes effect.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement

of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

Relief against forfeitures.

155. (*1*) A suit for the ejectment of a tenant, on the ground—

(*a*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(*2*) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(*3*) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2.)

(*4*) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

The principle enunciated in sub-sections (2) and (3) is justly objected to by Mr. Justice Field, see his minute para. 101. It will be observed

that in the notice which is to be given before suit, the tenant is required to remedy the misuse or pay compensation for the same. After his failure to comply with the landlord's demand, the latter is to sue for ejectment, and if he be so fortunate as to recover a decree, the Court may repeat this demand, and postpone its fulfilment *ad infinitum*, "finality," as Mr. Justice Field says, "will be difficult of attainment.

Rights of ejected raiyats in respect of crops and land prepared for sowing.

156. The following rules shall apply in the case of every raiyat ejected from a holding:—

(*a*) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

(*b*) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;

(*c*) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;

(*d* if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

"Before the date of ejectment," *i.e.*, before the date when the tenant is actually ejected.

Power for Court to fix fair rent as alternative to ejectment.

157. When a plaintiff institutes a suit for the ejectment of a trespasser, he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Application to determine incidents of tenancy.

158. (*1*) The Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, namely :—

(*a*) the situation, quantity and boundaries of the land ;

(*b*) the name and description of the tenant there of (if any) ;

(*c*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy raiyat, non-occupancy-raiyat, or under-raiyat ; and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure ; and

(*d*) the rent payable by him at the time of the applicttion.

(*2*) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV. of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

(*3*) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

General powers of purchasers as to avoidance of incumbrances

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests," but with power to annul the interests defined in this chaper as "incumbrances :"

Provided as follows :—

(*a*) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf ;

(*b*) the power to annul shall be exercisable only in manner by this chapter directed.

A decree for rent obtained by a landlord against his registered tenant renders the tenure in respect of which it is passed liable for sale although it may have passed into other hands than those of the judgment-debtor, the landlord's remedy is, however, strictly confined to the sale of the tenure. Rashbehary Bondopadhya *v.* Peare Mohun Mookerjee, I. L. R., 4 Cal. 346, see Sham Chand Kundu *v.* Brojo Nath Pal Chowdry, 21 W. R. 94.

According to the provisions of this chapter a purchaser of a tenure or holding at a sale for arrears of rent in respect thereof shall not be competent to annul "protected interests" as defined on the next section, but shall be competent to avoid "incumbrances as defined in section 161" subject to the conditions of the proviso.

Protected interests

160. The following shall be deemed to be protected interests within the meaning of this chapter :—

(*a*) any under-tenure existing from the time of the Permanent Settlement;

(*b*) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(*c*) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made;

(*d*) any right of occupancy;

(*e*) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI. by a Court, or under Chapter X. by a revenue-officer;

(*f*) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(*g*) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Upon the motion of the Hon'ble Bábú Peary Mohun Mukerji that clauses (*c*), (*e*) and (*f*) of this section should be omitted, the Hon'ble Sir Steuart Bayley said :—

"I wish to meet the Hon'ble Member on one point on which he spoke, but I would first point out that the protection to subordinate interests

against which the Hon'ble Member protests is precisely the protection given in case of sales for arrears of Government revenue. I admit, however, that in regard to clause (*c*), though the danger of injury is such as may safely be overlooked, in regard to its bearing on Government revenue, yet the danger of seriously lessening the rent of the superior holder by protecting absolutely all interests created under clause (*c*) is not imaginary, and we ought if possible to safegard the landlord against it. It can be met by an adaptation of section 13 of Bengal Act VII. of 1868, and I propose therefore to insert a clause to that effect. It will be precisely the same as the section of the Bengal Act in a modified form so as to make it run with this chapter. It will come in after section 167 of the Bill. To this extent I am prepared to meet the Hon'ble Member's objection, but no further."

Meaning of "incumbrance" and "registered and notified incumbrance."

161. For the purposes of this chapter—

(*a*) the term "incumbrance," used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

(*b*) the term "registered and notified incumbrance" used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

The distinction between an "incumbrance" and a "protected interest" should be carefully noted.

"A protected interest" has reference to the incidents of the tenure itself which is sold, an "incumbrance" to some right created in favor of a person other than the person whose tenure or holding is sold, and which imposes a limitation on the enjoyment of the latter's right and derogates from it.

Incumbrances may be of three classes. (1) registered and notified, (2) and registered and unnotified, and in the case of incumbrances affecting interests less than one hundred rupees in value which may not be registered under section 175 after this Act comes into operation (3) unregistered and unnotified; a purchaser of a tenure or holding at fixed rates at a sale held under section 164 may annul incumbrances (2) and (3); a purchaser under section 165 may annul all incumbrances.

r sale of tenure or holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment

and sale of the tenure or holding in execution of the decree, he shall produce a statement shewing the parganá, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

Section 235. "The application for the execution of a decree shall be in writing verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain, in a tabular form, the following particulars (namely)—

(*a*) the number of the suit;
(*b*) the names of the parties;
(*c*) the date of the decree;
(*d*) whether any appeal has been preferred from the decree
(*e*) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;
(*f*) whether any and what previous applications have been made for execution of the decree and with what result;
(*g*) the amount of the debt or compensation, with the interest (if any), due upon the decree, or other relief granted thereby;
(*h*) the amount of costs (if any) awarded;
(*i*) the name of the person against whom the enforcement of the decree is sought; and
(*j*) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require."

Order of attachment and proclamation of sale to be issued simultaneously

163. (*1*). Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

(*2*) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

(*a*) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold

on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(*b*) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(*3*) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(*4*) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

"The particulars mentioned in section 287 of the Code of Civil Procedure are (*a*) the property to be sold;
(*b*) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government;
(*c*) any incumbrance to which the property is liable;
(*d*) the amount for the recovery of which the sale is ordered; and
(*e*) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property."

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

164. (*1*) When a tenure or a holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(*2*) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

Speaking of the effect of a sale of a tenure for arrears of rent upon sub-leases and incumbrances, the Rent Commission observe in para. 185 of their Report:—

"The object of making sub-leases and incumbrances voidable upon the sale of a tenure for arrears of rent is, that the superior landlord's

security for his rent may not be impaired. If the sub-leases and incumbrances of a tenure have not absorbed so much of the tenure-holder's profits as to render the interest left him insufficient to meet the rent which he pays to the proprietor of whom he holds his tenure; if the tenure, subject to these sub-leases and incumbrances will sell for a sum sufficient to satisfy any decree that can be passed for arrears of the rent payable by the tenure-holder—it cannot be said that the proprietor-landlord's security for his rent has been impaired so far as to bring the case within the above object. The right of sub-letting and creating incumbrances belongs to every tenure-holder—such is the common law of the country. So long as the landlord is certain of the rent to which he is entitled, he cannot justly complain of the exercise of this right or claim to interfere with it. When, however, the exercise of the right extends so far as to endanger the landlord's rent, to impair the security for such rent afforded by the sale of the tenure by public auction, the case is altered, and the landlord may reasonably demand that these sub-leases and imcumbrances be avoided, which have rendered the remaining interests of the tenure-holder an insufficient security for the rent payable by him.

In this view of the matter, we have enacted (sections 203, 206) that a tenure, undertenure or occupancy holding, about to be sold in execution of a decree for arrears of its own rent, shall first be put to auction, subject to certain incumbrances, and, if the sum bid is sufficient to liquidate the amount of the decree and costs, shall be sold subject to such incumbrances. If the highest amount bid is not sufficient to liquidate the decree, the decree-holder, that is, the landlord, may then claim to have the tenure, &c., sold free of incumbrances. Such sale is not to be had immediately, but upon a subsequent sale-day not less than fifteen or more than thirty days afterwards; and a notification of such tenure being about to be offered for sale free of incumbrances must be posted up on some conspicuous place upon the land of the tenure. The effect of these provisions will be, that persons, who hold sub-leases and incumbrances, will not be endamaged if the bidding on the first sale-day reaches an amount sufficient to satisfy the decree, and the tenure is in consequence sold subject to incumbrances. If, on the other hand, the bidding on the first sale-day does not reach an amount sufficient to satisfy the decree, such persons will have time to protect themselves from injury by paying in the amount of the decree, (which they subsequently recover from the defaulter), and so preventing such a sale of the tenure as will avoid incumbrances.

187. It has appeared to us that the superior landlord ought to have notice of the creation of the incumbrances to which the above protection is afforded, and that this protection ought not to be extended to all incumbrances indiscriminately. We have accomplished this by defining the term "incumbrances" to mean and include every incumbrance, lien, sub-lease, or subordinate interest which the defaulting holder of the tenure, undertenure or occupancy holding was by law competent to create in derogation of his own interest, and which was created by an instrument in writing duly registered, a copy of such instrument being served upon the person to whom the rent of the tenure, undertenure or occupancy holding is payable. This provision will, we trust, prevent fraud, if sought to be accomplished by setting up sham incumbrances after the sale. It will also enable an intending purchaser to ascertain the real value of property about to be sold, and he will probably bid more than if he was in a state of uncertainty on this point. We have provided for

incumbrances created before the commencement of the Act by instruments in writing duly registered under the law applicable to them, by allowing a copy of any such instrument to be served within six months after the commencement of the Act. Mr. O'Kinealy would extend the same privilege to *unregistered* incumbrances created before the Act, which were not required to be registered by any law in force at the time of their execution; but a majority of us are apprehensive lest this might induce some persons to set up incumbrances fabricated for the purpose.

With the exception of these registered incumbrances, of the creation of which the superior landlord has had notice, and which are protected in the case of a sale of the tenure subject to incumbrances, a purchaser will be entitled to avoid and annual all imcumbrances imposed upon the tenure by any holder thereof, his representatives or assignees, unless in the case of incumbrances allowed by law, the right of creating the same was expressly granted by the written engagement under which the tenant was originally let into possession, or by the subsequent written authority of the person who let him into possession, or of the representatives or assignees of such person—section 210). *Khúdkasht* ryots or resident and hereditary cultivators are not, however, liable to ejectment under this rule, nor can a purchaser cancel *bonâ fide* engagements made with them, unless he can show that a higher rent would have been fairly demandable at the time when such engagements were contracted: he may, however, proceed under the provisions of the Act to enhance the rents of all other ryots. We have provided in accordance with a decision of the Privy Council, that the judgment-debtor himself or any person acting in fraudulent collusion with him for the purpose of disencumbering the tenure shall not be entitled to avoid incumbrances."

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

165 (*1*) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction, and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(*2*) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

A mortgage of a tenure or of a transferable jote would be an incumbrance. In Robert Watson & Co., *v.* Gonesh Chunder Shaoo,

3 C. L. R. 240, the landlord obtained two decrees for rent on account of a tenure against his registered tenant who had however mortgaged it in favor of the defendant. In execution of the earlier decree the landlord purchased *the rights and interests* of the tenant the mortgagor; the defendant as the mortgagee then foreclosed his mortgage and entered upon possession, he did not however pay the amount of the second rent decree nor caused his name to be registered in the office of the landlord, the latter accordingly executed his second decree and purchased *the tenure itself*, it was held that his title prevailed over that of the defendant. The learned Chief Justice, in the course of his judgment in the case, doubted the correctness of the ruling in Nobin Kissen Mookerjee *v.* Shib Prosad Pattuck. 8 W. R. 96. In Shahaboodeen *v.* Futteh Ali, 7 W. R. 260, a Full Bench of the Calcutta High Court, presided over by Sir Barnes Peacock, decided that the purchaser of a tenure at a sale held before Act VIII. of 1869 came into operation could not avoid incumbrances unless the power of bringing it to sale was reserved by stipulation in the engagements interchanged on its creation. This view was approved by the Privy Council in Forbes *v.* Luchmeeput Singh, 17 W. R. 197. Under the former law questions frequently arose as to whether the sale was that of the rights and interests of the holders of the tenure merely, or of the tenure itself: see Dwarka Nath *v.* Aloke Chunder Seal, I. L. R., 9 Cal. 640. See Tirthanand Thakoor *v.* Pares Mon Jha, 10 B. L. R. 142 foot-note. The purchaser at a sale in which a portion of a tenure was sold in execution of a rent decree cannot avoid incumbrances: Reily *v.* Hur Chunder Ghose, I. L. R., 9 Cal. 722. The incumbrance must be created by the owner of the tenure: Durga Prosono Ghose *v.* Kali Das Dutt, 9 C. L. R. 449.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

166. (*1*) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(*2*) The purchaser at a sale under this section may, in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

Procedure for annuling incumbrances under the foregoing sections.

167. (*1*) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an applicaton in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(*2*) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(*3*) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause

the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c), the purchaser may, if he has power under this chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

168. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter be treated in all respects as if they were tenures.

Rules for disposal of the sale-proceeds.

169. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

(a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;

(b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;

(*c*) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale;

(*d*) the balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(*2*) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

The decree of the Court mentioned in sub-section (2) will be subject to appeal under the ordinary rules.

Tenure of holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree holders.

170. (*1*) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

(*2*) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(*3*) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this section.

Amount paid into Court to prevent sale to be in certain cases a mortgage debt on the holding.

171. (*1*) When any person having, in a tenure or holding advertised for sale under this chapter, an interest which would be avoidable upon the sale, pays into Court the amount requisite to prevent the sale,—

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum, and secured by a mortgage of the tenure or holding to him;

(*b*) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(*c*) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(*2*) Nothing in this section shall affect any other remedy to which any such person would be entitled.

The principle enunciated in this section seems to have been borrowed from Cl. (4) section 13 Reg. VIII. of 1819 which says :—

"If the person or persons making such a deposit (*i. e.* a deposit of the amount for which a putni is about to be sold) in order to stay the sale of the superior tenure shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in or set against future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the taluk so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon in the same manner as if the loan had been made upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter in order to recover the amount so advanced from any profits belonging thereto. If the defaulter shall desire to recover his tenure from the hands of the person or persons who by making the advance may have acquired such an interest therein and entered on possession in consequence, he shall not be entitled to do so except upon repayment of the entire sum advanced with interest at the rate of twelve per cent. per annum up to the date of possession having been given as above, or upon exhibiting proof in a regular suit to be instituted for the purpose that the full amount so advanced with interest has been realized from the usufruct of the tenure."

Inferior tenant paying into Court may deduct from rent.

172. When a tenure or holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Decree-holder may bid at sale; judgment-debtor may not.

173. (*1*) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a tenure or holding is sold under this chapter may, without

the permission of the Court, bid for or purchase the tenure or holding.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it shall be paid by the judgment-debtor.

Application by judgment debtor to set aside sale.

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to five per centum of the purchase money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside;

Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section.

(3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this Chapter.

In Azizoonnessa Khatoon *v.* Gora Chand Dass, I. L. R. 7 Cal. 163, it was held that the provisions of Section 311 applied to the sale of under-tenures,

Registration of certain instruments creating incumbrances.

175. Notwithstanding anything contained in Part IV. of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

Notification of incumbrances to landlord.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Power to create incumbrances not extended.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER XV.

CONTRACT AND CUSTOM.

Restriction on exclusion of Act agreement.

178. (*1*) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(*b*) shall take away an occupancy-right in existence at the date of the contract, or

(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(*d*) shall take away or limit the right of a tenant as provided by this Act, to make improvements and claim compensation for them.

(*2*) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(*3*) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

(*a*) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;

(*b*) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

(*c*) take away the right of a raiyat to surrender his holding in accordance with section 86;

(*d*) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;

(*e*) take away the right of an occupancy-raiyat to sub-let subject to and in accordance with the provisions of this Act;

(*f*) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

(*g*) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40; or

(*h*) affect the provisions of section 67 relating to interest payable on arrears of rent;

Provided as follows:—

(*i*) nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would under Chapter V. be entitled to an occupancy right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

(ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of orchard land with agricultural crops.

The following extract fram the speech of the Hon'ble Mr. Ilbert made on the motion of the Hon'ble Baboo Peary Mohun Mookerjee to omit cl. (*d*) of sub-section (*1*) and clauses (*c*), (*e*), (*g*) and (*h*) of sub-section (*3*) will shew the spirit in which the section has been framed.

'We all know the theory on which the ordinary law of contract is based. It presupposes equality between the parties to the contract, full knowledge and appreciation by each party of the nature of the

rights to which he is entitled, and a deliberate intention on either side to modify those rights in a particular manner. Gaius and Titius, or Ram Dass and Ram Bux, meet in the market-place and strike a bargain, and when they have done so, the Courts hold them to their bargain. But the circumstances which lead up to the execution of a kabúliyat by an occupancy-raiyat are of a very different character. The raiyat's ordinary rights, the rights with which a kabúliyat purports to deal, are not based on contract, and the whole notion of their being capable of regulation by contract is unfamiliar to him. His rights are based on occupation and regulated by custom. He did not come in under a lease by which the landlord agreed to let and the tenant agreed to take a specified piece of land, for a specified term, under specified conditions; and if any instrument purporting to be such a lease can be produced against him, it is usually a fiction. He simply occupies the land, as his forefathers have occupied it before him, subject to the observance of certain conditions, the general character of which is approximately known and understood, though they have never been reduced to a definite written form. There is a nebulous borderland between his rights and those of the zemindar which has, from time immemorial, been the subject of dispute between them, and with respect to which the contest is under ordinary circumstances not unequally waged between persistent worry on the one side and passive resistance on the other. But there are certain central rights which we know very well that the raiyat would not give up except under the pressure of absolute necessity—rights which are essential to his status; and if we found that he has attached his signature or mark to a kabúliat purporting to give away these rights, we may feel morally certain that the signature has been obtained under circumstances which are described in the Indian Contract Act as constituting undue influence. In fact, whilst the elements of an ordinary legal contract are offered on the one hand and accepted on the other, the characteristic elements of the transaction which results in the execution of such kabúliyats as these, are pressure on the one side and submission on the other. It is the execution of instruments of this nature that we wish to prevent. We desire to prevent the occupancy-raiyat from contracting or appearing to contract himself out of rights which are essential to his status. We have no desire to make this section more stringent or more comprehensive than the nature of the case requires, and if it can be shown that any of its provisions can be relaxed or modified without any serious risk of allowing the main objects of our legislation to be defeated, I should be most ready to accept the modification."

Cl. (II) of the proviso was introduced by the Hon'ble Mr. Hunter. He said:—

"I move this amendment to remedy what I believe to be a serious defect in the Bill. The main provisions of section 178, which prevent the tenant's statutory rights from being defeated by special contracts, have my cordial support. But the section very properly accords a particular treatment to the reclamation of waste lands. It enables the landlords to bar the exercise of occupancy-rights during the currency of a reclamation lease—a lease which may run for an indefinite period, and which would probably run for twenty or thirty years. The Bill thus makes provision for the reclamation of waste lands by means of tenants holding under long leases. But it omits to make provision for the reclamation of waste lands by the landlord himself, working with his own servants, or with hired labour. This omission is probably

due to the circumstance that the latter class of reclamation has hitherto not been common. But cases of such reclamations have come to my notice, and I am told that their infrequency is due in part to the discouragements under which they are placed even by the present law. In the only case in which, so far as I know, extensive reclamation has been affected by the steam-plough in Lower Bengal, the landholder writes to me that the present law renders such reclamation disadvantageous to the reclaiming landlord; while under the new law no landholder would think of undertaking such reclamation, unless protected by some accidental local tenure like the *utbandi*. Yet there are several classes of reclamation which cannot be carried out by cultivators, but must be conducted by the landlord, or by a combination of neighbouring landlords, if they are to be effected at all. The Council is, I think, agreed that it is the interest alike of the cultivators and of the State that such reclamations of waste land should be undertaken. To add to the cultivated area is the most direct and the most permanent remedy for the great evil in certain parts of Bengal—over-population. But such reclamations will certainly not be undertaken by landholders if the Bill is allowed to stand as at present. My amendment only proposes to place the landholder who reclaims land at his own charges by hired labour, in as good a position as the landholder who reclaims by means of tenants on long leases. In so doing I desire to say that the amendment has been carefully framed with the intention to cover only *bona fide* reclamation of waste land. I hope that the representatives of both the landlords and the cultivators will see their way to accept an amendment, which is submitted to the Council in the interests of both." Supplement *Gazette of India*, 9th May 1885, p. 785.

Permanent mukarrari lease.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrarí lease on any terms agreed on between him and his tenant

Utbandi, Chur and dearh lands.

180. (*1*) Notwithstanding anything in this Act, a raiyat—

(*a*) who in any part of the country where the custom of utbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(*b*) who holds land of the kind known as chur or dearah,

shall not acquire a right of occupancy—

in case (*a*), in land ordinarily held under the custom of utbandi and for the time being held under that custom, or

in case (*b*) in the chur or dearah land,

until he has held the land in question for twelve continuous years, and until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI. shall not apply to raiyats holding land under the custom of utbandi in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant, or on a reference from the Civil Court declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

"Utbandi is applied to land held for a year or rather for a season only The general custom is for the husbandman to get verbal permission to cultivate a certain amount of land in a particular place at a rate agreed upon. While his crop is on the ground the land is measured and the land is assessed on it. A large proportion of the cultivable area of the Nadiya district is let out in utbandi." Hunter's statistical account of Nadiya p. 73.

Saving as to service-tenures.

181. Nothing in this Act shall affect any incident of a ghátwálí or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Homesteads.

182. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

In Prosunno Coomari Dabea *v.* Shekh Rutton Bepary, I. L. R. 3 Cal. 696 (Garth, C. J. and Birch, J.) where the tenant had erected certain kutcha buildings and been in occupation of certain homestead lands for fifty or sixty years, and the landlord sought to eject after notice, it was held that "there is no law in this country which converts a holding-at-will or from year to year into a permanent tenure merely because the tenant, without any arrangement with his landlord chooses to build a dwelling-house upon the land demised." See Taruckpodo Ghosal *v.* Shyama Churn Napit, 8 C. L. R. 50. In Gobind Chunder Sikdar *v.* Ayinuddin Sha Biswas, (Garth, C. J. and Mitter, J) 11 C. L. R. 281, where land was "let upwards of 60 years ago for building purposes and buildings *of a substantial character*, were erected some sixty years ago by the defenant's ancestors, and they and their ancestors had lived there ever since", it was held that the Court could presume from these facts that "the land was granted for building purposes, and that the grant itself was of a permanent character." See also Arut Sahoo *v.* Prandhun Pykura, I. L. R., 10 Cal. 502, where the court below did not raise the presumption, and the High Court did not interfere, consult however Prosonno Coomar Chatterjee *v.* Jugan Nath Basak, 10 C. L. R. 25 where the case law on the subject is fully explained. See also Beni Madhub Banerji *v.* Jaikrishna Mukerji, 7 B. L. R., 152, Chunder Kumar Roy *v.* Kadermony Dossee, 7 W. R., 247, Adaita Churn Dey *v.* Petumber Doss 17 W. R. 383, Koylas Chunder Sircar *v.* Woomanund Roy, 24 W. R., 412 Ramahun Khan *v.* Haradhun Paramanick, 9 B. L. R. 107.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions. Saving of custom.

Illustrations.

(*1*) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified, or abolished by the provisions of this Act. That usage accordingly, wherever it may exist, will not be affected by this Act.

(*2*) The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

In Lachman Rai *v.* Akbar Khan, I. L. R, 1 all. 440 the plaintiffs as zemindars sued their tenants for a declaration of their manorial rights as against all the tenants collectively to the appropriation by the plaintiffs of all trees of spontaneous growth, the fruit of mango, mohua and other trees planted by the defendants, and of their right to receive a tribute of two ploughs annually, as also an offering of a certain quantity of poppyseed, hemp, bhusa, cowdung cakes, and other farm produce on the occasion of the marriage of the lower caste tenants, with a further right to levy as dues from the said tenants a proportionate quantity of sugar-cane juice prepared by each sugar manufactory, and the presentation of a certain number of sticks of sugarcane on a certain day in each year to the plaintiffs. The High Court in remanding the case for further inquiry observed.—"The most cogent evidence of custom is not that which is afforded by the expression of opinion as to the existence, but by the enumeration of instances in which the alleged custom has been acted upon, and by the proof afforded by revenue or judicial records or private accounts and receipts that the custom has been enforced."

In Kupil Rai *v.* Radha Prosad Singh, I. L. R. 5 all 261, it appeared that the defendants were occupancy tenants of certain lands, that these lands submerged and reappeared after some years, that the tenant neither relinquished nor paid rent for them : it was held that the claim of the landlord that he was entitled to them according to a local custom was not tenable with reference to the provisions of Act 12 of 1881 (N. W. P. Rent Act.)

In Lala *v.* Heru Singh, I. L. R. 2 all 50, the claim was for the recovery of a cess which it was alleged was payable in accordance with the custom of the village on the second marriage of a widow of the Ramaiya caste. In dismissing the suit, Oldfield, J., observed "amongst the conditions essential for establishing a custom are that the custom is of remote antiquity, that it has been continued and acquiesced in, that it is reasonable and certain, and not indefinite in its character." Stewart, C. J. concurred in the above view.

CHAPTER XVI.

LIMITATION.

Limitation in suits, appeals and applications in Schedule III.

184. (*1*) The suits, appeals and applications specified in Schedule III. annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and the application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(*2*) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

In Haro Pershad Roy *v.* Gopal Das Dutt, I. L. R. 9 Cal. 255, the plaintiff was a purchaser by private sale from Government, of an estate which Government had purchased at a sale for arrears of revenue. The defendants held under certain leases and when the plaintiff wanted to re-enter on the expiration of these leases, they set up certain old chukdari tenures and refused to quit. The latter then brought a suit to set aside these tenures but failed: this litigation lasted from 1872 to 1881. In February 1876 plaintiff instituted a suit for arrears of such rent from 1866 to 1872, as would be due from the defendant on the chukdari tenures; it was held by the Privy Council that the principle laid down in Rani Surnomoyee *v.* Shoshee Mookhee Burmonea, 12 Moore's I. A. 244 and 2 B. L. R., P. C. 10, did not apply, and that the claim was barred by limitation under-section 29 Act 8 of 1869 B. C.

Portion of the Indian Limitation Act not applicable to such suits, &c.

185. (*1*) Sections 7, 8 and 9 of the Indian Limitation Act 1877, shall not apply to the suits and applications mentioned in the last foregoing section.

(*2*) Subject to the provisions of this chapter, the provisions of the Indian Limitation Act 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section.

In Khoselal Mahton *v.* Gunesh Dutt, I. L. R., 7 Cal 690, where a deposit had been made in Court under the provisions of Act 8 of 1869 (B. C.), and the six months allowed by S. 31 of that Act had expired on an authorized holiday, and the plaint was filed on the first open day, it was held (Mitter and Maclean, J. J.) that section 5 of Act XV. of 1877 applied, and that the suit was not barred.

By the operation of this section, the provisions of section 5 and other sections of the Limitation Act of 1877, except sections 7, 8 and 9, are expressly extended to suits and applications under the Act.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

Penalties for illegal interference with produce.

186. (*1*) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

(*2*) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (1) shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Agents and representatives of landlords.

Power for landlord to act through agent.

187. (*1*) Any appearance, application or act, in, before or to any Court or authoritiy, required or authorised by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(*2*) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(*3*) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent may be signed or certified by an agent, of the landlord authorized in writing in that behalf.

Joint-landlords to act collectively or by common agent.

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Rules under Act.

Power to make rules regarding procedure powers of officer and service of notices.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(*a*) any power exercised by a Civil Court in the trial of suits;

(*b*) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; and

(*c*) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

Procedure for making, publication and confirmation of rules.

190. *(1)* Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month

after the date of publication, at or after which the draft will be taken into consideration.

(*4*) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(*6*) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

Saving as to land held in a district not permanently settled.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

On the Hon'ble Baboo Peary Mohun Mookerji's pointing out that the effect of this section will be to exempt a large majority of Government estates from the operation of the rule of twenty years' presumption, the Hon'ble Sir Steuart Bayley said :—I think we have a right to complain of the repetition of the statement that the Government has made a separate law for Government estates from other estates. There is no such distinction in reality ; all temporarily-settled estates will be exactly in the same position ; there is no distinction between the Government and any other proprietor, and the assertion that the Government has made a separate provision for their own estates is simply misleading. The rules to which the Hon'ble gentleman objects will apply to all lands by whomsoever held in districts which are not permanently settled. The history of the matter is that it is a part of the existing law, which provides that the temporary settlement-holder could not contract beyond the term of his own settlement ; a settlement-holder therefore cannot protect his raiyat against subsequent enhancement in case of the subsequent enhancement of the revenue. That is the law, and it is practically repeated in this section. Then we come to the question of the presumption from twenty years' holding at an unchanged rent. The presumption cannot possibly arise where the revenue, and presumably the rent, is being constantly changed. I do not think the question could be better stated than as it has been formulated by the Rent Commissioners' Bill. The *exception* to section 6 of that Bill says :—

"In the case of a tenure or under-tenure situate in an estate not permanently settled, such presumption shall not operate to prevent the enhancement of the rent of such tenure or under-tenure upon the expiry of a temporary settlement of the revenue, unless the right to hold such tenure or under-tenure for ever at a fixed rate of rent has been expressly recognised in settlement-proceedings by a Revenue-authority empowered by Government to make definitively or confirm settlements." "That is to say, where a person has held from the time of the Permanent-Settlement there he has a right to go on holding at the same rent, but where you have the rent constantly changed, the presumption does not naturally arise that he has held from the Permanent Settlement. It is no idea of our own.

Power to alter rent in case of new assessment of revenue.

192. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

(*a*) land-revenue is for the first time made payable in respect of the land, or

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Rights of pasturage, &c.

Rights of pasturage, forest-rights, &c.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

Saving for conditions binding on landlords.

Tenant not enabled by Act to violate conditions binding on landlord.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any Act which involves a violation of that rule or condition.

Savings for special enactments.

Savings for special enactments.

195. Nothing in this Act shall affect—

(*a*) The powers and duties of settlement-officers as defined by any law not expressly repealed by this Act;

(*b*) Any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities ;

(*c*) Any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue ;

(*d*) Any enactment relating to the partition of revenue-paying estates;

(*e*) Any enactment relating to patni tenures, in so far as it relates to those tenures ; or

(*f*) Any other special or local law not repealed either expressly or by necessary implication by this Act.

Construction of Act.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council

Act to be read subject to Acts hereafter passed by Lieutenant Governor of Bengal in Council.

SCHEDULE I.

(See Section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII. of 1793	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamindars, independent talukdars and other actual proprietors of land in Bengal Behar and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII. of 1805	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the parganas of Pattaspur, Kummadichour and Bagrae, at present included in the zila of Midnapore.	Section 7.
V. of 1812	A Regulation for amending some of the rules at present in force for the collection of the land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII. of 1812	A Regulation for explaining Section 2, Regulation V. 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3, and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI. of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI. of 1862	An Act to amend Act X. of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal,	The whole Act.
IV. of 1867	An Act to explain and amend Act VI. of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII. of 1869	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII. of 1879	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Acts of the Governor-General in Council.

Number and year.	Subject of Act.	Extent of repeal.
X. of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal,	The whole Act.

(*Schedule II.—Forms of Receipt and Account.*)

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(*See sections 56 and 57.*)

*FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

1. Serial number of Receipt
2. Estate ; Village ; Thánd
3. Tenant's name , Son of
4. Particulars of the holding—

Nukdi, Bighás ; rent Rs.

Baouli, Bighás ; Maunds ; or Rs.

Julkur, Rs.
Bunkur, Rs.
Phulkur Rs.

Government Cesses { Road Cess, Rs. / Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (TENANT'S PORTION).

1. Serial number of Receipt
2. Estate ; Village ; Thánd
3. Tenant's name , Son of
4. Particulars of the holding—

Nukdi, Bighás ; rent Rs.

Baouli, Bighás ; Maunds ; or Rs.

Julkur, Rs.
Bunkur, Rs.
Phulkur, Rs.

Government Cesses { Road Cess, Rs. / Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent

Section 55 of the Bengal Tenancy Act, 1885, provides as follows :—

(1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

*For instructions to fill up the forms see Appendix.

(Schedule II.—Forms of Receipt and Account.)

DETAILS OF PAYMENTS (TENANT'S PORTION).

Date of payment, and name of person through whom paid.	Nukdi.		Baouli.		Julkur, &c.		Cesses.		Signature of the Landlord or his authorized agent.
	Current on account of kist .	Arrear on account of year , kist .	Current on account of crop .	Arrear on account of year , crop .	Current on account of kist .	Arrear on account of year , kist .	Current on account of kist .	Arrear on account of year , kist .	

DETAILS OF PAYMENTS (LANDLORD'S PORTION).

Date of payment, and name of person through whom paid.	Nukdi.		Baouli.		Julkur, &c.		Cesses.	
	Current on account of kist .	Arrear on account of year , kist .	Current on account of crop .	Arrear on account of year , crop .	Current on account of kist .	Arrear on account of year , kist .	Current on account of kist .	Arrear on account of year , kist .

* FORM OF ACCOUNT.

(Schedule III. Forms of Receipt and Account.)

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bíghás	Rate	Rs. A. P.
Nukdi			
Government Cesses			
	Bíghás	Maunds	Rs. A. P.
Baouli			
Julkur			
Bunkur			
Phulkur			

	Maunds	Rs. A. P.
4. Demand of the year		
5. Balance of former years (Bakaya)		
		Rs. A. P.
6. Total demand (current and arrear)		
7. Paid each on account of { Current demand ...		
{ Arrear demand ...		
	Maunds	
8. Paid in kind		
		Rs. A. P.
9. Balance outstanding at end of year ...		

10. Signature of the Landlord or his authorized Agent

* For instructions to fill up the form see Appendix.

* FORM OF ACCOUNT.

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{ Arrear demand ...		
	Maunds	
8. Paid in kind		
		Rs. A. P.
9. Balance outstanding at end of year ...		

10. Signature of the Landlord or his authorized Agent

SCHEDULE III.

LIMITATION.

(See section 184)

Part I.—*Suits.*

Description of Suit	Period of Limitation	Time from which period begins to run
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach	One year	The date of the breach
2 For the recovery of an arrear of rent—		
(*a*) When the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding	Six months	The date of the service of notice of the deposit
(*b*) in other cases	Three years	The last day of the Bengali year in which the arrear fell due, where that year prevails and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years	The date of dispossession.

Part II.—*Appeals*

Description of Appeal	Period of Limitation	Time from which period begins to run
From any decree or order under this Act to the Court of a District Judge or special Judge	Thirty days	The date of the decree or order appealed against
From any order of a Collector under this Act to the Commissioner.	Thirty days	The date of the order appealed against

Part III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree: except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.	Three years ...	(1) The date of the decree or order or (2) Where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) Where there has been a review of judgment, the date of the decision passed on the review.

Art. 1. A suit by a landlord against a tenant for removal of trees which the latter has planted on his holding is not governed by the limitation of one year but by Art. 120, Schedule II. Act. XV. of 1877. Gonesh Dass *v.* Goudor Kurmi, 12 C. L. R. 418.

Art (2.) Cl. (*a*) The calculation of the months will probably be according to the English Calendar, Mohomed Enahee Buksh *v.* Brojokishore Sen, I. L. R., 4 Cal. 497 Joy Mangal Singh *v.* Lal Ran Pal Singh, 4 B. L. R. app. 53, Kasro Mandar *v.* Premlal 9 B. L. R. app. 41, Luchmiput Singh Bahadoor *v.* Raj Coomari Dabee, 23 W. R. 275. Cl. (*b*) Art. 2. In Kashi Nath Bhuttacharji *v.* Rohini Kanth Bhuttacharji, I. L. R., 6 Cal. 325, a suit was brought for arrears of rent of 1280 on 30th Assar 1284, and the question arose whether it was in time, a Full Bench of the Calcutta High Court (Sir Richard Garth, C. J., presiding) held that rent becomes due at the last moment of time which is allowed to the tenant for payment. His Lordship the learned Chief Justice observed:—"We think it clear that the last day on which a suit for the recovery of arrears of rent can be instituted under the section referred to, is the last day of the third year, from the close of the year in which the rent became payable; and as in this case the rent was payable in the month of Cheyt 1280, and the defendant was bound to pay it before the close of the last day of that month, the plaintiff must have brought his suit within three years from that day."

Art. 3. Where the plaintiff "sets out his title and seeks to have his right declared and possession given, one year's limitation will not bar, Gooroodass Roy *v.* Ram Narain Mitter, 7 W. R. 187, Ramjoy Mundul *v.* Ram Sunder Mundul, 2 C. L. R., 4 Laljee Sahoo *v.* Bhagwan Dosse, 8 W. R., 337, Dhonye Mundul *v.* Arif Mundul, 9 W. R 306. It will be observed that the words "ejected by the person entitled to receive the rent" have been omitted in the present Act.

Art. 6. The essential words of section 58 Act VIII. of 1869 B. C. were, "no process of execution of any description whatsoever shall be issued on a judgment in any suit ... ... after the lapse of three years from the date of judgment unless the judgment be for a sum exceeding five hundred Rupees, in which case the period within which execution may be had shall be regulated by the general rules in respect to the period allowed for the execution of decrees of the Court." In Golokemony Dabia *v.* Mohesh Chunder Mosa, I. L. R., 3 Cal. 548, the decree was for arrears of rent, and dated 31st January 1873; on 5th July 1875 the decree-holder applied for execution by

arrest of the person and attachment and sale of the property of the judgment-debtor. On 22nd September 1875 the decree-holder informed the Court that the judgment-debtor had made a proposal for compromise, and that it was not necessary that he should be arrested. On the compromise falling through, a second application was made for the attachment of the judgment-debtor's property on 15th March 1876, the application was disallowed in the Courts below as barred by limitation, it was held that the execution was in time. Speaking of the Full Bench decision of Redoykrishna Ghose *v.* Koylash Chunder Bose (13. W. R. F. B 3, 4 B. L. R. 82 F. B.) Markby, J observes, "the words should be considered as meaning that execution shall not issue unless a proper *application* for execution is made within three years from the date of the judgment." With reference to the rule laid down in Lalla Ram Sahoo *v.* Dodraj Mahto, 20 W. R. 395, His Lordship says, "all that is necessary for us to say upon that decision is that the question of delay is nowhere referred to by the Full Bench. It may be that the question of delay may in some cases be useful in assisting the Court to determine whether an ambiguous proceeding is a fresh application for execution, or a step taken in furtherance of a previous application, but there is nothing which will authorize us to import into the law of limitation the question of diligence on the part of the judgment-creditor as a substantive portion of the law." See also Heeralal Seal *v.* Poran Matea, 6 W. R. (Act X) 84, Deodhary Singh *v.* Koonur Dowlut Ram, 3 C. L. R. 189. But see Kadumbini Dasi *v.* Kailash Chunder Pal Chowdry, 8 C. L. R. 19, where the decree was passed in June 1876 and moveable property of the judgment-debtor which had been attached was released from attachment, and the decree-holder directed to proceed against the tenure, and he failed to do so till 19th August 1879, it was held he was out of time.

If a decree provides for payment of the amount covered by it by instalments, the three years shall run from the date, when rents are adjudged to be payable, or in other words when the instalments are due, Goreebulla Sheik *v.* Mohunlall Shaha, I. L. R., 7 Cal p. 127. But see Momtaz al Huq *v.* Neerbai Singh. F. B. 12 C. L. R. 318, in which this case has been over-ruled, and it has been laid down by a majority of the Full Bench that limitation runs from the date of the decree and not from that on which instalments are payable.

In Kadumbini Dabia *v.* Koylash Chunder Pal Chowdry, I. L. R. 6 Cal. 554, it was held that where the amount covered by the original decree was less than Rs. 500, costs awarded in execution could not be added to exempt the decree from the operation of the rule laid down in section 58 Act VIII of 1869 (B. C.); costs of executing the decree however, will, under the Act, be taken into consideration in calculating the amount due on it within the meaning of this article.

Where a certified copy of a decree for less than Rs. 500 was transferred by the court which made it to another court for execution within, but application to the latter court for execution was made after three years, it was held the execution was barred, Bholanath Roy *v.* Huri Moni Debe, 12 C. L. R. 58.

Limitation Generally.

A landlord must sue for cancellation of a Mukarari tenure within twelve years from the date of his knowledge that the tenant was setting up a Mukarari title, Raja Saheb Prolhad Singh *v.* Run Bahadoor Singh 2. B L. R. P. C. 128, Nazimuddin Hussen *v.* Llyed, 6 B. L. R. App. 130. Tikaitni Gourikumari *v.* Bengal Coal Company, 12 B. L. R., 222 foot note. The plea of limitation can be set up against a landlord by a person who is really a trespasser, but who sets up a false case of tenancy, Deno Mony Dabea *v.* Doorga Prosad Mozoomdar, F. B. 12 B. L. R. 274. The non-payment of rent for a term of twelve years and more does not relieve an occupancy raiyat from the status of a tenant so as to give him a title to the land, as rent falls due year by year or kist by kist, the failure to pay it becomes a recurring cause of action, and therefore where the right to take rent is admitted by the raiyat, no question of limitation can arise, Poresh Narain Roy *v.* Kashi Chunder Talukdar, I. L. R., 4 Cal. 661.

ADDITIONAL NOTES.

Sec. 3—Where land is let for building purposes in town, Act. VIII. of 1869 B. C. does not apply, Poorno Chunder Roy *v.* Sadut Ali, 2 C. L. R. 31.

In p. 7 after description of tenures; gorabundi tenures are not necessarily transferable, Mohunt Chutoorbhooj Bharotee *v.* Janki Prosad, 4 C. L. R. 298.

Sec. 10 Where a mokurari lease contained a stipulation that if the lessee and her heirs failed to pay the rent for any year in full, the landlord should have the power to cancel the lease and re-enter and the latter recovered two decrees for rent, of the latter of which nothing was paid, and the plaintiff brought a suit for possession, it was held that the amount of the latter decree being deposited in court, the lease could not be cancelled, Duli Chand *v.* Rajkishore, I. L. R. 9 Cal. 88, 11 C. L. R. 326. See also Mohomed Amir *v.* Dianatali, 9 C. L. R. 185.

Sec. 11—Transfers of tenures or shares of tenures effected before the Act comes into operation would not be governed by the provisions of this, and the subsequent sections of this chapter, as regards such transfers the following cases under the old law may be consulted.

Mere knowledge on the part of the landlord of the transfer of a tenure is not sufficient to bind the landlord unless he has recognized the transferee, or unless registration of the transfer has been effected or some sufficient reason shown for non-registration, Woma Churn Chatterjee *v.* Kadumbini Dabee 3 C. L. R. 146. Anund Lall Mookerjee *v.* Kalika Prosad Misser 20, W. R. 59, but see Nobin Chunder Sen *v.* Nobin Chunder Chuckerbutty 22 W. R. 46.

Secs. 20 and 21. In Jardine, Skinner and Co. *v.* Rani Sarut Soondari Dabee, 3 C. L. R., 140, the High Court had observed—"At any rate it seems an irresistible conclusion that the occupancy of the defendants in these lands was connected with and arose entirely out of their tenure as ijradars of the Pergunnah. That being so, the case falls under the repeated decisions of this Court that no farmer or lease-holder can, during the term of his lease, create for himself a sub-tenure which is to endure after the lease expires, to the prejudice of the owner whose *locum tenens* he is during the term of his lease. But even if that were not so, it is impossible to see how the defendant could have acquired either a right of occupancy or a jotedar right in respect of an undivided share of an estate." With reference to these remarks, their Lordships say "their Lordships do not concur in the view thus expressed by the High Court to the effect that a right of occupancy cannot be acquired in respect of an undivided share of an estate; but they fully concur in the conclusion that the defendants holding as ijardars prior to and during the lease of 1865, did not create in them a right of occupancy, and that after the expiration of the lease of 1865, they held over subject to the terms of that lease." See also Lal Bahadoor Singh *v.* Solano 12 C. L. R. 559.

Sec. 25. Improper use of land does not necessarily operate as forfeiture, Noyna Misser *v.* Rup Chand Chungo, 12 C. L. R 300.

Sec. 26. Where an occupancy raiyat after transfer of his right to a stranger, takes a sublease from him and so remains in possession, it seems this would not amount to abandonment so as to entitle the landlord to re-enter, Shristidhur Biswas *v.* Madan Sirdar I. L. R. 9 Cal. 648, but see Ram Chunder Rai Chowdry *v.* Bholanath Lushkur, 22 W. R. 200.

Sec. 52. In a suit for arrears of rent the defendant, it appeared, had executed a Kabuliat, in which the boundaries of the land were given and the rate of rent fixed, and which provided that the land might be measured after 1261 (1854.) In 1281 (1874), a measurement was made, and it was found that some land had accreted; and the plaintiff now sued for rent of the accreted land, at rates varying with its nature and quality. Held, that the accreted land should be governed by the terms and conditions applicable to the parent tenure, and that the same rent was payable for it as for the land included in the kabuliat, Golam Ali *v.* Kallikrishna Thakur I. L. R., 7 Cal. 479.

Sec. 65. In Krishtandra Roy *v.* Aena Bewa, I. L. R., 8 Cal. 675, and Nundlol Ghose *v.* Siddhi Nuzur Ali Khan, 2 S. D. A. 1860, 382, it was ruled that if a landlord obtains a decree for rent, he cannot eject the holder of any tenure which by custom or its title deeds is transferable, his only remedy is to sell it. A raiyat having a right of occupancy cannot be ejected except under a decree regularly obtained under section 52

Act 8 of 1869 B. C. Where such a raiyat does not pay rent for 5 years, he does not necessarily forfeit his right, unless he has abandoned his land. Brojendro Kumar Roy Chowdry *v.* Bungo Chunder Mundul, 12 C. L. R. 389.

Sec. 67. The omission to claim interest cannot be considered as waiver to claim it for all time, Johury Lall *v.* Bullub Lall Babu 4 C. L. R. 349. Where a pottah provides that in default of the punctual payment of rent, it shall bear the customary and legal rate of interest, twelve per cent. per annum will be allowed, Anungo Mohun Deb Roy *v.* Muddun Mohun Mozoomdar, 1 C. L. R. 147.

Sec. 74. Where it is not actually proved that *Abwabs* have been paid or have been payable before the time of the permanent settlement, a landlord is not legally entitled to recover them as against his raiyats, even assuming they have been paid for a number of years, Chultan Mohoto *v.* Tilokdhari Singh, I. L. R., 11 Cal. 175. See also Komolakant Ghose *v.* Kunto Mundle, 11 W. R. 395, Nobin Chunder Roy *v.* Gooroogobind Surma Mozoomdar, 14 W. R. 447. Dhalee Poramanic *v.* Anund Chunder Talapatro, 5 W. R. 86. Sonnum Sookool *v.* Elahee Buksh, 7 W. R. 453. Orjoon Sahoo *v.* Anund Singh, 10 W. R. 257, Burma Chowdry *v.* Sreenund Singh, 12 W. R. 29. Mengur Mundre *v.* Baboo Hurce Mohun Thakur, 23 W. R. 447, Nobin Chunder Roy *v.* Gooroo Gobind Mozoomdar, 25 W. R. 2.

Khuntagara, or the levying by riparian proprietors of a charge imposed upon boatmen for driving pegs into the river bank for the purpose of attaching their boats thereto, is not an illegal cess. Dhunput Singh *v.* Denobundhoo Shaha, 9 C. L. R. 279

Purobee is not an illegal cess, if it is part of the consideration for which an agreement is made, Juggodish Chunder Biswas, Tunkulla Sirkar, 24 W. R. 90.

Sec. 143. A written statement does not require a stamp. Cherag Ali *v.* Kadermahomed, 12 C. L. R. 367, Nagu *v.* Yoknath, I. L. R. 5 Bom, 400.

At the close of the Bengalee year 1283, which was on the 11th of April 1877, the defendant owed to the plaintiff, his landlord, the rents of his holding for the years 1281, 1282, and 1283. The plaintiff, in the month of April 1878, before the close of the year 1284, instituted a suit for the rent for 1281 only, and obtained a decree. On the 10th of April 1879, he instituted another suit for recovery of the rents for the years 1282, 1283, and 1284, held, that the claim for the years 1282 and 1283 was barred under Sec. 43 of the Code of Civil Procedure, Taruck Chunder Mookerjee, *v.* Panchu Mohini Debya, I. L. R. 6 Cal. 791.

Sec. 145. A Gomasta or Am Muktear cannot bring a suit for rent in his own name. Kunjabehary Roy *v.* Purna Chunder Chatterjee, 12 C. L. R. 55.

Sec. 153. Where the value of the subject matter of the suit does not appear in the proceedings to be less than Rs. 100, the right of second appeal is not taken away. Tulsi Panday *v.* Lala Bechulal, 12 C. L R. 223 F. B.

Sec. 155. An appeal does not lie to the High Court from a decision of a District Judge staying execution in a suit for arrears of rent and for ejectment where the value of the amount decreed is less than Rs. 100, nor can an application made to eject the tenant on his default to pay into court the moneys due under the decree within the time fixed by the court confer such right of appeal, Parbutty Churun Sen *v.* Seikh Mandary, I. L. R. 5 Cal. 594.

Sec. 156.—Growing crops go to the auction purchaser, Oftatalla *v.* Dwarkanath Moitro, I. L. R., 4 Cal. 814.

Sec. 159. In the Full Bench case, Sham Chand Koondoo *v.* Brojo Nath Palchowdry, 12 B. L. R. 484, 21 W. R. 94 Sir Richard Couch (C. J.) observes.—"I think the zemindar, having obtained a decree for arrears of rent, is entitled to sell the tenure, and that the person who has obtained a transfer which he has not registered, and cannot shew a sufficient cause for not registering, is bound by the sale, and cannot set up a title which he has acquired by a previous sale."

Sec. 160.—See exception 4, section 37 Act XI. of 1859, the language of which is similar. A Khamarbari, a garden and a tank, if *bonâ fide* made, would be permanent buildings, Asgar Ali *v.* Asmut Ali, I. L. R. 8 Cal. 110. See also Bhaga Bebi *v.* Ram Kanth Roy Chowdry, I. L. R, 3 Cal. 293. There is analogy between the powers of an auction purchaser at a sale for arrears of revenue and those of an auction purchaser at a sale for arrears of rent with reference to the power to avoid incumbrances, but in both cases they are not *ipso facto* void, but only voidable, Titu Bebi *v.* Mohesh Chunder Bagchi, 12 C. L. R. 304. F. B.

Sec. 165. The plaintiff purchased a mourasi taluq at a sale in execution of a decree obtained against the taluqdar for arrears of rent of the taluq, and then sued to recover possession of certain lands held by the defendants within the taluq. The defence was that the lands in question were held by the defendants under a patta which had been granted to their ancestor, in 1733, by the then taluquars in respect of certain services to be performed by the grantees and their descendants. The Court of first instance found that the patta was genuine, and dismissed the plaintiff's suit. On appeal the Subordinate Judge found that the patta was a forgery, and that although the lands had been granted to the defendant's ancestor in respect of services, yet the plaintiff was entitled to khas possession, as he did not require the services to be performed. He, therefore, decreed the plaintiff's claim. Held, the decree was right, for having found that the patta on which the defendants chiefly relied was a forgery, the Subordinate Judge was not bound, as a matter of law, to presume that the tenure was a permanent one, merely from the fact of long possession of the lands. Nobin Chunder Dutt *v.* Modun Mohon Pal, I. L. R. 7 Cal. 697.

Sec. 182. The mere fact that a tenure is transferable according to custom does not make it one which is not terminable by the landlord by notice, Shyama Soondori *v.* Nobin Chunder Kolya, 6 C. L. R. 117. Gungadhur Shikdar *v.* Aymuddi Biswas, I. L. R. 8 Cal. 960.

Sec. 188. A sale of share in a tenure let out to a tenant in its entirety does not of itself necessarily effect a severance of the tenure or an apportionment of the rent. If the purchaser is desirous to have such a severance. he is entitled, after giving notice to the tenant, to enforce it by private arrangement or by suit. In the latter case he must make the other co-sharers parties to the suit, Ishwar Chunder Dutt *v.* Ramkrishna Doss, I. L. R., 5 Cal. 902 F. B. Two co-sharers, joint owners of a zemindari, caused their shares to be separately registered in the Collector's Office under Section 10 Act XI. of 1859, subsequently one of them sued certain persons who held raiyatee tenures in his zemindari for enhancement of rent without making the other co-sharer a party ; it was held that the suit would not lie : Jogendro Chunder Ghose *v.* Nobin Chunder Chuttopadhya, I. L. R., 8. Cal. 533. A tenant who has taken a lease from joint owners to whom he has paid his rents jointly, may be sued by one of his lessors for the latter's share of the rent, Jadu Dass Mohunt *v.* A. Sutherland, 3 C. L. R. 223, see also Gunga Narain Sirkar *v.* Sreenath Banerjee, 6 C. L. R. 16, Lutful Huq *v.* Gopi Churn Mozoomdar, 6 C.L.R. 402. See also the cases quoted ante p. 63.

A fractional owner of an estate is not entitled to maintain a suit for ejectment. Tulsidas Panday *v.* Lala Bechulal, 12 C. L. R. 223 F. B. Reasut Hussein *v.* Johair Singh, Annoda Churn Roy *v.* Kali Kumar Roy, I.L.R., 4 Cal. 89. In a joint estate the payment by a tenant of his share of the rent is only presumptive evidence of the substitution of a separate contract with him, Anoo Mundul *v.* Shaik Kamaloodeen, 1 C. L. R. 248.

Schedule 2, Art. 1. See also Kadarnath Nag *v.* Kshetter Pal Sritirutno, I. L. R., 6 Cal. 34.

Schedule 2, Art. 3. Although a tenant in a suit for possession may pray to have his title declared, still if no question of title be really involved, the period of limitation will be one year (Garth, C. J. & Bose, J.) Imambuksh *v.* Momin, Mundle I. L. R., 9 Cal. 280.

See, however, Dhurjobutty Chowdrani *v.* Chamroo Mundle, 25, W. R. 217. Joyunti Dassy *v.* Mahomed Ali Khan I. L. R., 9 Cal. 423. (Wilson and Macpherson, J. J.)

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BENGAL TENANCY BILL, 1885, No. III.

THE following further Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the law of landlord and tenant within the territories under the administration of the Lieutenant-Governor of Bengal, was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 13th February 1885 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend and consolidate certain enactments relating to the law of landlord and tenant within the territories under the administration of the Lieutenant-Governor of Bengal was referred, have considered the Bill and the papers noted in the schedule annexed, and have now the honour to submit this our further Report.

It must be understood that, in referring to the decisions of the Committee, we state the view of the majority where there has been any difference of opinion.

CHAPTER I.

PRELIMINARY.

2. We have made some slight amendments in, and additions to, this chapter, but few of them call for notice here.

The definition of "estate" and that of "proprietor," which is dependent on it, have given rise to the erroneous supposition that it was intended to exclude Government tenants from the operation of the Bill. We have now so amended the definitions as to remove any misapprehension on this point.

3. As it seems reasonable that the provisions of the Bill contained in sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII. and Schedule III., should apply to money recoverable under any enactment as if it was rent, we have added to the definition of "rent" a clause providing that "rent" shall in those portions of the Bill include such money.

CHAPTER II.

CLASSES OF TENANTS.

4. The only amendments calling for notice in this chapter are—

1st—that we have omitted all reference to the raiyat converted into a tenure-holder under section 37 of the Bill No. II, as it has been determined to omit section 37 (see *infra*, paragraph 17); and

2nd—that we have altered section 5 (5) so as to provide that a tenant holding more than 100 bighás shall be presumed, until the contrary is shown, to be a tenure-holder, without raising an issue as to his having sub-let any part of his holding.

CHAPTER III.

TENURE-HOLDERS.

5. We have in section 7 of this chapter included, among the matters to which a Court must have regard in enhancing the rent of a tenure-holder, the questions

whether the tenure was originally granted at a specially low rent for the purpose of reclamation," and "whether any fine or premium was paid on the creation of the tenure."

6. We have omitted section 8 of the Bill No. II., which provided that a Court should not enhance the rent of a tenure to more than double the previous rent.

7. We have in section 9 made the interval which must elapse between successive enhancements of the rent of a tenure the same as in the case of an occupancy-holding, namely, fifteen years.

8. We have omitted the provisions of this chapter specially applicable to patní tenures, and Chapter XVI., relating to summary sale of patní and other tenures for arrears, as we are, on further consideration, reluctant to interfere at present with the existing law regarding patní tenures, and are of opinion that any extension of the patní sale law to other tenures should be reserved for consideration in connection with the Bengal Registration Bill, to which we shall presently have to refer.

9. We have in sections 12 to 16 of the Bill so far altered the system of the registration of transfers of, and successions to, permanent tenures as to provide merely for enabling the landlord to register such transfers instead of compelling him to do so.

The Bill in its previous stages provided for a compulsory system of registration by the landlord. This, it was objected, would not work satisfactorily, especially as the landlords of many tenure-holders are poor and ignorant persons, having no regular office and no means of establishing one or maintaining a suitable register. At the same time it was pointed out that the establishment of an official registry would confer a great benefit on all concerned, and especially on the landlords, who might, if such a registry were established, be allowed to realize their rents by the process of summary sale, which is now available only in the case of a limited class of tenures.

A Bill for the establishment of an official registry is at this moment before the Bengal Legislative Council, and the object we have set before ourselves in recasting the portion of our Bill now under consideration has been to frame its provisions in such a manner as to secure to the Collector, who will be the officer entrusted with the preparation and maintenance of the official register, early and accurate information of all transfers and successions which may from time to time take place.

We have not overlooked the fact that the substitution of official registration for registration in the landlord's sherista would deprive the landlords of the fees which it was proposed to allow them under the Bill as originally framed, and which, it is believed, they commonly realize at present, though in most cases without any warrant of law. We think that the fees prescribed by the Bill in its earlier stages may well be paid to the landlord, even though he is to be relieved of the duty of registration.

10. The provisions we have inserted in the Bill, in order to give effect to these views, are as follows:—

First, as regards voluntary transfers (section 12), the simplest plan has appeared to us to be to require that every such transfer shall be registered under the ordinary law relating to the registration of documents. It is understood that the Local Government will make all arrangements requisite for facilitating the registration of such transfers. The parties applying for registration will be required to pay to the registering officer "the landlord's fee" and a process-fee for the service of notice on the landlord. When the registration has been completed, the

registering officer will forward to the Collector the landlord's fee, and a notice of the transfer containing all necessary particulars, and the Collector will thereupon cause the landlord's fee to be paid to the landlord and the notice to be served upon him, at the same time taking any such steps as may be prescribed by the measure now pending before the Bengal Legislative Council for the entry of the transfer in his official register.

When a transfer takes place by sale in execution of a decree (sections 13 and 14), the procedure will be substantially similar, the notice and the fee being sent to the Collector by the Court, except that, following the lines of the Bill in its earlier stages, we have not provided for the payment of a fee to the landlord when the sale takes place in execution of a decree for arrears.

In the only remaining case of transfer, namely, that of transfer by summary sale, the Collector will have in his own office all the information requisite for the purpose of registration.

11. When a succession to a permanent tenure takes place, the party succeeding will be bound (section 15) to give notice to the Collector and pay to him the landlord's fee, and the process-fee above referred to, and the Collector will then proceed as above described.

12. In order to compel the person succeeding to comply with the provisions of this section, we have retained, for the case of successions, the provision of section 18 of the Bill No. II., under which a person succeeding will be debarred from recovering his rent by suit, distraint, or otherwise, until he has given the notice and paid the fees prescribed.

CHAPTER V.

Occupancy-raiyats.

13. The first alteration in this chapter which appears to call for notice has reference to the area over which the status of settled raiyat is to hold good.

In the 11th paragraph of our first Report we referred to the inconvenience which might arise in certain exceptionally large estates from the status holding good over the whole estate, and this has given rise to considerable discussion. The Bengal Government, in the 22nd paragraph of its report of the 15th September 1884, stated that "the majority of the officers consulted disapproved of the definition of 'settled raiyat' as given in the Bill," and that "the proposal which found favour was the elimination of the word 'estate' from the definition."

That Government, nevertheless, was of opinion that it was necessary to retain the word "estate" in order to meet the danger of the acquisition of the occupancy-right being prevented by shifting raiyats from one village to another within the estate.

It seemed to us that this danger was not so great as to justify the extension, over all portions of an estate, of the status of "settled raiyat" acquired in one portion of it, since estates are frequently divided among numerous tenure-holders, who would have no opportunity of examining each other's books, or knowing anything about each other's raiyats. The danger in either direction is not serious, for in the vast majority of cases the raiyat is practically tied to his own village; and we felt, moreover, that by confining the status to the village we should be proceeding in closer conformity to the original conception of a khúdkásht raiyat, which, as explained in the Statement of Objects and Reasons of the Bill, it has been always intended to keep in view.

14. We have in section 22 re-cast sections 28 and 29 of the Bill No. II., so as to carry out more precisely the intention with which they were framed, and we have inserted a sub-section (2) providing that if the occupancy-right in land is

transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist.

15. Sections 23 to 26 of the amended Bill take the place of sections 31 to 36 of the Bill No. II; but, except a saving of custom as regards the descent of the occupancy-right in section 26, the only important change they involve is the omission of all provisions regarding the transfer of the occupancy-right, which, apart from the matter of sale in execution of a decree for rent (dealt with in Chapter XIV.), we now propose to leave to custom as under the existing law.

16. The reasons for and against the proposal to make the occupancy-right everywhere transferable by an express legislative enactment, have been so fully discussed within the last three years, and are so well known to all interested in such matters, that we shall not lengthen this Report by attempting to recapitulate them. It is enough to say that the Government of Bengal, in their letter of the 15th of September last, proposed to leave the law relating to the transferability of the right for the present untouched in Behar, and that on a further consideration of the question we are of opinion that the most prudent course will be to omit the provisions relating to voluntary transfer altogether from the present Bill. This decision has enabled us to omit all reference to the question of preemption.

17. The 37th section of the Bill No. II., which provided that raiyats subletting their land should in certain cases be deemed to be converted into tenure-holders, has met with much adverse criticism, and we now propose to omit it.

The remaining provisions as to sub-letting we have relegated to Chapter IX., where they will be found with certain modifications and additions.

18. In regard to the enhancement of rent in the case of occupancy-rights, the Government of Bengal made certain proposals in their letter of 15th September 1884, which are summarised in the 84th paragraph of that letter as shown on the margin.*

* VI.—To recognize the principle that, in the absence of reason to the contrary, the Courts shall regard a rise in the price of staple food-grain as entitling the landlord to an enhancement of rent.

VII.—To fix the percentage by which the enhanced rent shall exceed the former rent at a definite proportion (one-half is suggested for consideration) of the percentage by which the enhanced prices exceed the former prices, the other portion going as an allowance for increased cost of production.

VIII.—To assign to enhancements on the ground of landlords' improvements a maximum limit of double the former rent.

IX.—To abandon the provision for enhancement on the ground of a "prevailing rate," experience having shown that no such rate exists, and that the position assigned to it in the present law has led to the construction of conclusive and fictitious rates for the purpose of forcing up rents.

X.—To abandon fluvial action as a ground of enhancement of rent, but to recognize freedom of contract between landlord and raiyat in regard to new alluvium.

XI.—To withdraw the arbitrary limitations on enhancements by suit on account of a rise in prices, and to allow contracts for enhancement of rent out of Court up to a maximum limit of two annas in the rupee (12½ per cent.) of the former rent, and for a minimum period of 15 years.

XII.—To withdraw all restrictions on freedom of contract in respect of the *initial* rent of all land which may lapse to the landlord from whatever cause.

XIII.—To re-introduce the provision that the rent of the occupancy or non-occupancy raiyat shall not exceed one-fifth of the value of the gross produce calculated in staple food-grains.

In regard to VI. and VII. we said in paragraph 34 of our Report last year that, in applying the proportion rule in the case of prices, the question of making some deduction to cover the effect of increased prices on the cost of cultivation would receive further consideration. The Government of Bengal recommended a deduction of one-half on this account. We recognised the difficulty of making the Courts ascertain the actual cost of production, and as it was necessary to fix an arbitrary limit, we have fixed the deduction at one-third as a general rule.

19. With reference to VIII. we did not think we could justify any arbitrary limit in terms of a fractional proportion of the old rent being placed on enhancement when made on the ground of landlords' improvements.

20. We were unable to accept the proposal (IX.) to abolish the prevailing rate as a ground of enhancement, inasmuch as this has, in one shape or another, been a ground of enhancement ever since the Permanent Settlement, and as it is the only means by which a landlord can remedy the effects of fraud or favouritism on the part of his agent or predecessors. In view, however, of the dangers which are said by competent authorities to arise from the artificial manufacture of rates, and from the very wide interpretation given to the term "places adjacent," we have somewhat modified the terms of the section, have limited enhancement to the rate ascertained to be the prevailing rate *in the village*, and have required that this rate should be determined with reference to the rates actually paid during a period of not less than three years before the institution of the suit.

21. We were not able to accept the proposal (X.) to abandon fluvial action as a ground of enhancement.

22. On the other hand, we have accepted the proposal (XI.) to limit enhancements by registered contract (except on the ground of improvement made by the landlord) to two annas in the Rupee (12½ per cent.) carrying with it in all cases a right to hold at the enhanced rent for 15 years, and we have at the same struck out all the fractional limits placed on enhancement in Court by sections 44 (*a*), 45 (*b*) and 47 (*b*) of the Bill No. II.

23. The restrictions which it was proposed by section 42 to impose in certain cases on the initial rents payable by settled raiyats have, we think, been shown to be impracticable, and we have therefore, as proposed by the Government of Bengal (XI.), omitted the section.

24. We were not able to accept the recommendation numbered XIII.

25. The only other amendments in the chapter which appear to call for special notice are as follows:—

(*a*) we have required Courts, in dealing with claims to enhancement on the ground of a rise in prices, to take decennial periods instead of quinquennial periods for the purposes of comparison, except when, owing to the absence of price-lists or any other cause, they find it impracticable to take such periods, in which case they may take any shorter periods;

(*b*) we have amended section 39 so that the price-lists prepared under it shall be merely presumptive evidence instead of being conclusive, as provided in the corresponding provision of the Bill No. II. The Bengal Government are of opinion that their arrangements are not at present so perfect as to justify these lists being made conclusive evidence;

(*c*) we have in section 40 included among the matters to be taken into consideration by an officer commuting rent the charges incurred by the landlord in respect of irrigation under the system of rent in kind and the arrangements made on commutation for continuing those charges.

CHAPTER VIII.

General Provisions as to Rent.

26. We have omitted from the section (50), which enacts the well-known presumption arising from holding at a rent unchanged for 20 years, the sub-section which made the presumption applicable to produce-rents, as opinions generally were opposed to it.

27. We have, in section 52, providing for the alteration of rent on the ground of an alteration in the area of the holding, assimilated the provisions of the two

clauses (*a*) and (*b*), which provide respectively for increase and reduction; and we have inserted the following new sub-section to guide the Courts in cases where there may be a dispute as to the area for which the tenant has been paying rent:—

"In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

"(*a*) the origin and conditions of the tenancy; for instance, whether the rent was a consolidated rent for the entire holding;

"(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise, with the knowledge and consent of the landlord;

"(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area; and

"(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit."

We have also brought the section under the general rule that the Court shall not fix a rent which would be unfair or inequitable.

28. We have substituted for the section of the Bill No. II. regulating the instalments in which rent is to be payable, the following simpler provision, namely:—

"53. Subject to agreement or established usage, a money-rent payable by a tenure-holder or raiyat shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year;"

and to prevent raiyats being harassed by successive suits for arrears, when by agreement or custom, a larger number of instalments than four may be established, we have inserted in Chapter XIII. a section (147) enacting in effect that such suits shall not be instituted against a raiyat oftener than once in three months.

29. We have made certain amendments in the division of the chapter relating to receipts and accounts, but the only one calling for special notice is the insertion of a new section (59) requiring the Local Government to provide and keep on sale forms of receipts and accounts. It will be for the landlords to choose whether they will use those forms, but we believe they will be found convenient.

30. In pursuance of the policy of the Bengal Act for the registration of proprietors, we have inserted the following section:—

Effect of receipt by registered proprietor.

"60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

"But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee."

31. We have likewise modified in some particulars the provisions relating to the deposit of rent, but need only mention the provision that the deposit shall be made in the Court having jurisdiction to entertain a suit for the rent, and the limitation of the second ground on which an application to deposit rent may be made to cases where the tenant has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the landlord will not be willing to receive the rent or grant a receipt.

32. We have omitted the second sub-section of section 77 of the Bill No. II., which enacted that, when the right, title and interest of a tenant is brought to sale in execution of a decree obtained by a person other than the landlord, the landlord shall be entitled to have his rent paid first out of the sale-proceeds, and we have so re-cast the section as to make it clear that, in the case of a tenure-holder, raiyat at fixed rates, or occupancy-raiyat, the landlord's remedy for arrears will be sale and not ejectment, and that the arrears will be a first charge on the tenure or holding.

33. We have substituted for section 79 of the Bill No. II. a section (67) providing that an arrear of rent shall bear simple interest at the rate of 12 per cent. per annum from the expiration of that quarter of the agricultural year in which the instalment falls due.

34. To meet those cases in which transfer without the landlord's consent is a valid custom, we have provided in section 73 that, until notice of such a transfer is duly served on the landlord, the transferor and transferee shall be jointly and severally liable for arrears of rent accruing after the transfer.

CHAPTER IX.

Miscellaneous Provisions as to Landlords and Tenants.

35. We have in section 79 provided that a non-occupancy raiyat shall be entitled to construct a well for the irrigation of his holding. A well constructed under this provision will be an improvement within the meaning of the Act, and the raiyat will, on being ejected, be entitled to receive compensation for it. The high importance of facilitating and encouraging the construction of all works of irrigation in this country, with a view to the prevention of famine, points to the necessity of this.

36. We have inserted a new section (84) giving power to landlords to acquire by compulsory sale, through the Civil Court, and at a price to be fixed by the Court, any land in their estate required for building purposes or for religious, charitable or educational objects. The necessity of some such power, especially with a view to provide building-sites either for new tenants or in cases of diluvion, has been strongly urged upon us. We have guarded the section against abuse by requiring the certificate of a Collector as to the sufficiency of the reason before action can be taken under it.

37. We have inserted a section (85) providing that if a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord, unless made with his landlord's consent; that a sub-lease by a raiyat shall not be admitted to registration, if it purports to create a term exceeding nine years (seven years was the longest term for which an occupancy-raiyat could sub-let under section 38 of the Bill No. II.,); and that where a raiyat has without his landlord's consent granted a sub-lease by an instrument registered before the commencement of the Act, the sub-lease shall not be valid for more than nine years from the commencement of the Act.

38. In dealing with surrender and abandonment, the only changes made by us which need here be noticed are, the provisions which we have inserted to check collusive surrender or abandonment in fraud of the rights of third parties. The necessity for this was brought to notice in paragraph 69 of the Bengal Government's letter of 15th September, where it is shown that raiyats not unfrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-lessees in such cases entirely at the mercy of the sub-lessor in collusion with his landlord, would do serious

practical harm. We have, therefore, provided (section 86 (6)), that the surrender of a holding which is subject to a registered incumbrance shall not be valid without the consent of the incumbrancer and the landlord, and in case of abandonment, we have provided (section (87 (4)) that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over for the unexpired period of his sub-lease the full rights and liabilities of his lessor, in regard to the rent of his entire holding. These provisions appear to us to present the only method by which protection can be given to the sub-lessee without injury to the landlord or without risking the conversion of these sub-leases into permanent transfers. In the case of sale in execution of a decree for rent, the sub-lessee has the same protection as other incumbrancers under Chapter XIV.

39. We have in section 88 provided that a division of rent shall not be valid as against the landlord without his consent in writing. This we understand to be the existing law.

40. We have amended section 90 so as to make it clear that a landlord is not entitled to enter on and measure land exempt from the payment of reveuue.

41. We have in section 92 substituted the acre for the standard bigha as the official standard of measurement, and have empowered a Court or Revenue-officer to direct, where such a course may seem more convenient, that a measurement shall be made by any other specified standard.

CHAPTER X.

Record-of-Rights and Settlement of Rents.

42. In the Bill No. II. the two processes known as the record-of-rights and the settlement of rents were dealt with separately, but it seemed to us more convenient that they should be amalgamated, and we have accordingly given to the Revenue-officer who is appointed to settle disputes during the operation of recording rights a similar power to settle disputes regarding rents.

We have, however, provided for two distinct kinds of settlement. Under the ordinary settlement, the officer will only have the power to settle rents when a settlement of land-revenue is being made or a question between the landlord and tenant arises, and such rents as he settles will generally be fixed for a term of years; in other cases his recorded entries will only have a presumptive value; he can, moreover, only reduce rents on the grounds under which reduction is demandable in the Civil Courts. Under the special settlement, which will only be undertaken with the previous sanction of the Government of India, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, the Settlement-officer will have power to settle all rents, and will, moreover, have power to reduce rents on other grounds than those ordinarily applicable. We think that, in the exceptional cases in which it may be necessary to have recourse to this procedure, the Government should have power to go to the root of the matter, and to put its settlement on a thoroughly stable footing.

Tables of Rates.

43. We have decided, in deference to the opinion of many experienced officers, and with the consent of the Government of Bengal, to omit the chapter (XI. of Bill No. II.) providing for the preparation of tables of rates. It was evident that the procedure would only be made use of in rare and exceptional cases, and a more effectual method of treating these cases is provided in the Settlement chapter.

CHAPTER XI.

Record of Proprietors' Private Lands.

44. The only amendment calling for notice in this chapter is the insertion of a provision in section 116, that nothing in the chapter (VI.) relating to non-occupancy-raiyats shall apply to a proprietor's private lands. This merely expresses what was always intended, though by an oversight it was not previously provided for.

CHAPTER XII.

Distraint.

45. We have inserted two sections of some importance at the end of this chapter.

The first (141) provides that when the Local Government is of opinion that, in any local area or in any class of cases, it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application to the Court under this chapter, it may by order authorize the landlord to distrain by himself or his agent; but that a landlord so distraining shall forthwith give notice to the Court, and that the Court shall thereupon depute an officer to take charge of the produce distrained, and proceed thereafter as if he had distrained under the ordinary procedure. The other section (142) added to this chapter empowers the High Court to make rules regulating the procedure under it.

CHAPTER XIII.

Judicial Procedure.

46. Section 147 has already been noticed (*supra* paragraph 28).

47. We have in section 148 added to the sections of the Civil Procedure Code, which are not to apply to rent-suits, section 326, empowering the Court to authorize the Collector to stay an execution sale of land in certain cases.

48. We have in section 153 excepted from the rules restricting appeals in rent-suits cases in which a question of the amount of rent annually payable by the tenant has been determined.

49. We have omitted section 172 of the Bill No. II., which required all mutual claims between the landlord and tenant as such to be inquired into and determined in every suit and proceeding for ejectment.

CHAPTER XIV.

Sale for Arrears under Decree.

50. We have added to the "protected interests" in section 160—

"(*e*) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI. by a Court or under Chapter X. by a Revenue officer."

The section as it stood would probably have been construed to cover such cases, but we think it well to leave no room for doubt on the point.

51. We have, in order to shorten proceedings, inserted in section (163) a clause enacting that in cases under this chapter the order of attachment and the proclamation of sale required by section 287 of the Civil Procedure Code shall be issued simultaneously.

52. We have at the suggestion of our honourable colleague Bábu Peári Mohan Mukerjee, inserted a new section (174) allowing a judgment-debtor to apply to set

aside a sale of his tenure or holding on depositing in Court within thirty days from the date of sale for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to 5 per cent. of the purchase-money. Applications under section 311 of the Code of Civil Procedure to set aside sales cause expense and annoyance to the decree-holder and auction-purchaser. It is believed that they are often instituted merely with a view to recovering the tenure or holding which has been sold, and it is anticipated that if a judgment-debtor is allowed to recover his property by depositing after the sale the amount decreed against him, the number of these applications will be considerably diminished.

CHAPTER XV.

Contract and Custom.

53. A question having been raised as to how far section 210 of the Bill No. II. which was intended to have retrospective effect, should be allowed such effect, we have carefully considered each provision of that section, and have come to the conclusion that some of those provisions ought, with reference to this point, to be treated differently from others. The way in which we propose to treat the matter will be best seen from the new section we now propose, which runs as follows :—

178. (*1*) Nothing in any contract between a landlord and tenant made before or after the passing of this Act—

"(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

"(*b*) shall take away an occupancy-right in existence at the date of the contract, or

"(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

"(*d*) shall take away or limit the right of a tenant as provided by this Act, to make improvements and claim compensation for them.

"(*2*) Nothing in any contract made between a landlord and tenant since the 15th day of July 1880,* and before the passing of this Act shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land.

"(*3*) Nothing in any contract made between a landlord and tenant after the passing of this Act shall—

"(*a*) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;

"(*b*) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

"(*c*) take away the right of a raiyat to surrender his holding in accordance with section 86;

"(*d*) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;

"(*e*) take away the right of a raiyat to sub-let subject to, and in accordance with, the provisions of this Act;

"(*f*) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

"(*g*) take away the right of a landlord or tenant to apply for a commutation of rent under section 40; or

"(*h*) affect the provisions of section 67 relating to interest payable on arrears of rent."

* This was the date of the publication by the Government of Bengal of the Rent Commission's Report and Draft Bill.

54. To meet the important case of a lease for the reclamation of waste land, to which these provisions are not suitable, we have added the following proviso :—

"Provided as follows :—

"(*i*) Nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V., be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right."

55. We have further provided that the section shall not affect those contracts which are occasionally entered into for the temporary cultivation of orchard land with agricultural crops.

56. We have in section 180 put útbandi lands on the footing on which chur lands were placed by section 213 of the Bill No. II., that is to say, no occupancy-right will be acquirable in them until they have been held for twelve years, and meantime the tenant will be bound to pay whatever rent may be agreed on between him and his landlord. We have further provided that Chapter VI. of the Bill shall not apply to such lands.

57. We agree with the Government of Bengal in thinking that it is not desirable to make any special provision regarding the lands known as hál-hasili, and we have accordingly omitted all references to them in this chapter.

58. We have considered the proposals of the Government of Bengal regarding homestead lands, and find that they practically resolve themselves into this, that the tenure of such lands should, as provided by section 216 of the Bill No. II., be regulated by local custom, with this addition, however, that, subject to local custom, they should be regulated by the provisions of the Bill applicable to land held by a ráiyat. We have amended the section (182) on these lines.

CHAPTER XVII.

Supplemental.

59. We have in section 189 added to the powers which may be conferred on officers by the rules to be made by the Local Government—"any power exercisable by any officer under the Bengal Survey Act, 1875."

60. We have also inserted the following new section, which speaks for itself :—

"194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition."

Tenant not enabled by Act to violate conditions binding on landlord.

61. Lastly, we have added a section (196) providing that "this Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council." In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the Supreme Legislature, find itself practically debarred for all time to come from dealing with almost every question affecting the relations of agricultural landlords and tenants.

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62. In the 99th paragraph of our former Report we mentioned certain points on which we desired further information, and on which we solicited the opinions of the Local Government or High Court or both, and to these it is necessary briefly to allude, in so far as they have not been disposed of by the foregoing remarks.

63. The first of these points, which was referred to the Local Government, was "whether, with reference especially to landlords' improvements, it is desirable to empower Revenue-officers to arrange for the cutting of irrigation-channels, the distribution of water and the payment of compensation, and, if so, what form such provisions should take."

We are fully sensible of the great importance of this question, but on full consideration we agree with the Government of Bengal in thinking that a discussion of it would be out of place in connection with the present Bill, and that it will be most appropriately treated in connection with the irrigation law, which will probably soon come under revision in Bengal.

64. The only other points specially referred to the Local Government, and to which we have not already adverted, were certain proposals to extend the patní sale procedure. Those proposals did not commend themselves to the Local Government, and now that the patní procedure is to be excluded from the present Bill, they would more properly be reserved for future consideration.

65. The remaining points to which we think it necessary to advert, had reference to the question as to the possibility of devising some simplification of the procedure in rent-suits. In paragraph 83 of our former Report we said—"For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice." We, however, proposed that certain suggestions which had been made should be referred for the opinion of the High Court. The reply of the Honourable Judges is among the papers before us, and we regret to find that, as we apprehended, they too are unable to strike out any royal road to the result desired. They disapprove of the specific suggestions made, and they state it as their opinion that the true remedy for the evils complained of is to be found in executive rather than in legislative action, that is to say, in an increase in the judicial staff and a reduction of the court-fees.

Since the reply of the Honourable Judges had been received, further proposals have been submitted to us, and in particular a scheme put forward by Bábú Mohiny Mohun Roy, on which the opinions of certain officers have been taken, but we regret to say we have not found among them anything which would materially abridge the procedure without entailing a risk of serious failure of justice. The executive measures referred to by the High Court will, doubtless, receive careful consideration at the hands of the Government.

S. C. BAYLEY.
RIVERS THOMPSON.*
C. P. ILBERT.
LAKSHMESHWAR SINGH OF DARBHANGA.*(*a*)
J. W. QUINTON.
T. M. GIBBON.*
AMIR ALI *(*b*)
W. W. HUNTER.*
H. J. REYNOLDS.*
PEARI MOHAN MUKERJI.*(*c*)
G. H. P. EVANS.*

The 12th February 1885.

* Signed subject to dissent on certain points.

(*a*) I sign this Report as it represents the views of the majority, but I reserve to myself the right of recording a separate dissent.

(*b*) I object to some of the main provisions of the Bill, and have recorded a separate dissent.

(*c*) This Report represents the views of the majority. I object to the main principles of the Bill and record a separate dissent.

Extracts from the Irish Land Act 1870 (33 & 34 Vict. Chap. 46.)

Compensation in respect of improvements.

4. Any tenant of a holding who is not entitled to compensation under sections one and two of this Act, or either of such sections, or, if entitled, does not make any claim under the said sections, or either of them, may on quitting his holding, and subject to the provisions of section three of this Act, claim compensation to be paid by the landlord under this section in respect of all improvements on his holding made by him or his predecessors in title.

Provided that—

Exception of certain improvements.

1. A tenant shall not be entitled to any compensation in respect of any of the improvements following; that is to say—

(a.) In respect of any improvement made before the passing of this Act, and twenty years before the claim of such compensation shall have been made, except permanent buildings and reclamation of waste land; or,

(b.) In respect of any improvement prohibited in writing by the landlord as being and appearing to the Court to be calculated to diminish the general value of the landlord's estate, and made within two years after the passing of this Act, or made during the unexpired residue of a lease granted before the passing of this Act; or,

(*c.*) In respect of any improvement made either before or after the passing of this Act in pursuance of a contract entered into for valuable consideration therefor; or,

(*d.*) (Subject to the rule in this section mentioned as to contracts) in respect of any improvement made, either before or after the passing of this Act in contravention of a contract in writing not to make such improvement; or,

(*e.*) In respect of any improvement made either before or after the passing of this Act which the landlord has undertaken to make, except in cases where the landlord has failed to perform his undertaking within a reasonable time;

Exception of certain tenancies.

(2.) A tenant of a holding under a lease or written contract made before the passing of this Act shall not be entitled, on being disturbed by the act of the landlord in or on quitting his holding to any compensation in respect of any improvement, his right to which compensation is expressly excluded by such lease or contract;

3. A tenant of a holding under a lease made either before or after the passing of this Act for a term certain of not less than thirty-one years, or in case of leases made before the passing of this Act for a term of a life or lives with or without a concurrent term of years, and which leases shall have existed for thirty-one years before the making of the claim, shall not be entitled to any compensation in respect of any improvement, unless it is specially provided in the lease that he is entitled to such compensation, except permanent buildings and reclamation of waste land, and tillages or manures, the benefit of which tillages or manures is unexhausted at the time of the tenant quitting his holding:

4. A tenant of a holding, who is quitting the same voluntarily, shall not be entitled to any compensation in respect of any improvement when it appears to the Court that such tenant has been given permission by his landlord to dispose of his

interest in his improvements to an incoming tenant upon such terms as the Court may deem reasonable, and the tenant has refused or neglected to avail himself or such permission:

5. Out of any moneys payable to the tenant under this section, all sums due to the landlord from the tenant or his predecessors in title in respect of rent, or in respect of any deterioration of the holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement, may be deducted by the landlord, and also any taxes payable by the tenant due in respect of the holding and not recoverable by him from the landlord.

Any contract between a landlord and a tenant whereby the tenant is prohibited from making such improvements as may be required for the suitable occupation of his holding and its due cultivation shall be void both at law and in equity, but no improvement shall be deemed to be required for the suitable occupation of a tenant's holding and its due cultivation which appears to the Court to diminish the general value of the estate of the landlord, nor shall anything in this Act contained authorise or empower any tenant or occupier, without the previous consent in writing of the landlord, or break up or till any land or lands usually let, occupied, or used as grazing or grass lands, or let expressly as grazing or meadow land, or to cut timber without the consent of the landlord; provided that the tenant may cut timber planted and registered by him or his predecessors in title.

Any contract made by a tenant by virtue of which he is deprived of his right to make any claim which he would otherwise be entitled to make under this section shall, so far as relates to such claim, be void both at law and in equity, subject, however, to the enactment contained in the section of this Act relating to the partial exemption of certain tenancies, and to the provision in this section as to any improvement made in pursuance of a contract entered into for valuable consideration therefor.

Where a tenant has made any improvements before the passing of this Act on a holding held by him under a tenancy existing at the time of the passing thereof, the Court in awarding compensation to such tenant in respect of such improvements, shall in reduction of the claim of the tenant, take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held and any benefits which such tenant may have received from his landlord in consideration, expressly, or impliedly, of the improvements so made.

Presumption in respect of improvements.

5. For the purposes of compensation under this Act, in respect of improvements on a holding which is not proved to be subject either to the Ulster tenant-right custom or to such usage as aforesaid, or where the tenant does not seek compensation in respect of such custom or usage, all improvements on such holding shall, until the contrary is proved, be deemed to have been made by the tenant or his predecessors in title, except in the following cases where compensation is claimed in respect of improvements made before the passing of this Act:

(1.) Where such improvements have been made previous to the time at which the holding in reference to which the claim is made was conveyed on actual sale to the landlord or those through whom he derives title:

(2.) Where the tenant making the claim was tenant under a lease of the holding in reference to which the claim is made:

(3.) Where such improvements were made twenty years or upwards before the passing of this Act:

(4.) Where the holding upon which such improvements were made in valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of more than one hundred pounds :

(5.) Where the Court shall be of opinion that in consequence of its being proved to have been the practice on the holding, or the estate of which such holding forms part, for the landlord to make such improvements, such presumption ought not to be made :

(6.) Where, from the entire circumstances of the case, the Court is reasonably satisfied that such improvements were not made by the tenant or his predecessors in title :

Provided always, that where it is proved to have been the practice on the holding or the estate of which such holding forms part, for the landlord to assist in making such improvements, such presumption shall be modified accordingly.

Permissive registration of improvements.

6. Any landlord or tenant who may be desirous of preserving evidence of any improvements made by himself or by his predecessors in title before or after the passing of this Act, may at any time (subject to the provisions hereinafter contained) file a schedule in the Landed Estates Court specifying such improvements, and claiming the same as made by himself or his predecessors in title, and such schedule so filed shall be *primâ facie* evidence that such improvements were made as therein mentioned : Provided always, that notice in writing of the intention to file such schedule, together with a copy thereof, shall be given by the landlord to the tenant for the time being of the holding on which such improvements shall have been made (or by the tenant to the landlord, as the case may be,) within the prescribed time before applying to the Landed Estates Court to file the same ; and if the person receiving such notice shall dispute the claim made by such schedule, either wholly or in part, he shall be at liberty within the prescribed time, and in the prescribed manner to apply to the Civil Bill Court to determine the matter in difference, and in such case such schedule shall not be filed unless or until leave shall have been given to file the same either in its original or in any amended form by the Civil Bill Court ; provided also, that before filing any such schedule, proof shall be made in the Landed Estates Court by statutory declaration that the notice hereby required has been duly given, and that no application has been made within the prescribed time by the party receiving such notice to the Civil Bill Court or (if any such application has been made) that leave has been given by the Civil Bill Court to file such schedule.

Compensation in respect of payment to incoming tenant.

7. Where any tenant of a holding does not claim or has not obtained compensation under sections one, two, or three of this Act, and it is proved to the satisfaction of the Court that any such tenant, or that his predecessors in title, on coming into his holding paid money or gave money's worth with the express or implied consent to the landlord on account of his so coming into his holding, the Court shall award to such tenant on quitting his holding, in respect of the sum so paid, such compensation as it thinks just, having regard to the circumstances of the case ; but such tenant shall not be entitled to any compensation under this section when it appears to the Court that such tenant has been given permission by the landlord to obtain such satisfaction from an incoming tenant in respect of the money so paid, or the money's worth so given by him ; and on such terms as the Court may think reasonable, and such tenant has refused or neglected to avail himself of such permission ; moreover, where the money or money's worth paid or given by any tenant claiming compensation under this section on coming into his holding, was paid or given, in whole or in part, in respect or as covering the value of any

improvements on the holding, care shall be taken that such tenant shall not receive compensation in respect of the same improvements under this section and also some other section of this Act; provided that out of any moneys payable to the tenant under this section all sums due to the landlord from the tenant or his predecessors in title in respect of rent, or in respect of any deterioration of a holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement, and also any taxes payable by the tenant due in respect of the holding, and not recoverable by him from the landlord, may, if not deducted under the provisions of section four of this Act, be deducted by or on behalf of the landlord: provided always, that this section shall not apply when such money or money's worth has been paid during the existence of a lease made before the passing of this Act.

Compensation in respect of crops.

8. Where a holding is proved to be subject to the Ulster tenant-right custom or such usage as aforesaid, and where the tenant claims under such custom or usage, and such custom or usage extends to away-going crops, the compensation payable in respect of away-going crops shall be dealt with according to the custom or usage, but the tenant of every other holding, which is not proved to be subject to the Ulster tenant-right custom or such usage as aforesaid, or in respect of which no claim is made under such custom or usage, shall, in the absence of any agreement in writing to the contrary, on quitting his holding, be entitled to all his away-going crops, or at the option of the landlord to be paid the value of the same.

Limitation as to disturbance in holding.

9. For the purposes of this Act, ejectment for non-payment of rent, or for breach of any condition against assignment, subletting, bankruptcy or insolvency, shall not be deemed disturbance of the tenant by act of the landlord, and for the purposes of this Act a person who is ejected for non-payment of rent, or for breach of any such condition as aforesaid, and is not disturbed by act of the landlord within the meaning of this Act, shall stand in the same position in all respects as if he were quitting his holding voluntarily; provided that in the case of a person claiming compensation on the determination by ejectment for non-payment of rent of a tenancy existing at the time of the passing of this Act, and continuing to exist without alteration of rent up to the time of such determination, the Court may, if it think fit, treat such ejectment as a disturbance, if the arrear of rent in respect of which it is brought did not wholly accrue within the three previous years, and if any earlier arrear remained due from the tenant at the time of commencing the ejectment, or, if in case of any such tenancy of a holding held at an annual rent not exceeding fifteen pounds, the Court shall certify that the non-payment of rent causing the eviction has arisen from the rent being an exorbitant rent; provided that no tenant who shall have given notice of surrender, and afterwards refuse to give up possession in pursuance of such notice, shall be entitled to any compensation under section three of this Act, though evicted by the landlord in a suit founded on such notice.

Exception in case of lands required for labourers' cottages.

10. Any landlord may, after six months' notice in writing to be served upon the tenant, or left at his house, resume possession from a yearly tenant of so much land (not to exceed in the whole one twenty-fifth part of any individual holding) as he may require for the *bonâ fide* purpose of erecting thereon one or more labourers' cottages, with or without gardens attached, and such resumption of land shall not, unless the Court shall be of opinion that same was unreasonable, be deemed a disturbance of the tenant within the meaning of this Act, and shall not subject the landlord to any claim for compensation, except in respect of improvements, beyond an abatement of rent proportionate to the annual value of the land so taken by the landlord.

Derivative title of tenant.

11. For the purposes of this Act a tenant shall be deemed to have derived his holding from the preceding tenant if he has paid to such preceding tenant any money or given to him any money's worth in respect of his holding, or has taken such holding by assignment or operation of law from the preceding tenant; and where a succession of tenants have derived title each from the other, the earlier in such succession shall be deemed to be the predecessor of the later, and the later in such succession shall be deemed to be the successor of the earlier.

Partial exemption of certain tenancies.

12. A tenant of a holding which is not proved to be subject to the Ulster tenant-right custom or such other usage as aforesaid, whose holding, or the aggregate of whose holdings, in Ireland is valued under the Acts relating to the valuation of rateable property in Ireland at any annual value of not less than fifty pounds, shall not be entitled to make any claim for compensation under any provision of this Act in cases where the tenant has contracted in writing with his landlord that he will not make any such claim.

Section 13 repealed, see p. 54.

Eviction in certain cases not to be deemed a disturbance.

14. Where it is proved to the Court that the tenant of any holding held under a tenancy from year to year existing at the time of the passing of this Act is evicted by the landlord by reason of the persistent exercise by such tenant of any right not necessary to the due cultivation of his holding, and from which such tenant is debarred by express or implied agreement with his landlord, such eviction shall not be deemed a disturbance of the tenant by the act of the landlord; or where the tenant of any holding so held as last aforesaid at the time of the passing of this Act is evicted by the landlord by reason of the tenant's unreasonable refusal to allow the landlord, or any person or persons authorised by him in that behalf, he or they making reasonable amends and satisfaction for any injury to be done or occasioned thereby, to enter upon the holding for any of the purposes following, that is to say,

Mining or taking minerals;

Quarrying or taking stone, marble, gravel, sand, or slate;

Cutting or taking timber or turf;

Opening or making roads, drains, and watercourses;

Viewing or examining the state of the holding and all buildings or improvements thereon;

Hunting, shooting, or fishing or taking game or fish;

Such eviction shall not be deemed a disturbance of the tenant by the act of the landlord, unless it shall be shown that the landlord is persisting in such eviction after such refusal has been withdrawn by the tenant.

Exemption of certain lands.

15. No compensation shall be payable under the preceding provisions of this Act in respect of—

(1.) Any demense land, or any holding ordinarily termed "townparks" adjoining or near to any city or town which shall bear an increased value as accommodation land over and above the ordinary letting value of land occupied as a farm, and shall be in the occupation of a person living in such city or town, or the suburbs thereof, or any holding let to be used wholly or mainly for the purpose of pasture, and valued under the Acts relating to the valuation of property in Ireland at an annual value of not less than fifty pounds, or any holding let to be used wholly or mainly for the purposes of pasture, the tenant of which does not actually reside on the same unless such holding adjoins or is ordinarily used with the holding on

which such tenant actually resides: Provided that nothing herein contained shall prevent the tenant of any such holding making any claim which he otherwise would be entitled to make under sections four, five, and seven of this Act; or

(2) Any holding which the tenant holds by reason of his being a hired labourer or hired servant; or,

(3.) Any letting in conacre or for the purposes of agistment or for temporary depasturage; or,

(4.) Any holding let and expressed in the document by which it is let to be so let for the temporary convenience or to meet a temporary necessity either of the landlord or tenant, and the letting of which has determined by reason of the cause having ceased which gave rise to the letting.

(5.) Any cottage allotment not exceeding a quarter of an acre.

Definitions.

General definitions.

70. In the construction of this Act the following words and expressions shall have the force and meaning hereby assigned to them, unless there be something in the subject or context repugnant thereto:

The term "person" or "party" shall extend to and include any body politic, corporate, or collegiate, whether aggregate or sole, and any public company:

The term "county" shall extend to and include county of a city, and county of a town, and a riding of a county, where such county of a city, county of a town, or riding of a county is appointed for civil bill purposes:

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act:

The term "lease" shall include an agreement for a lease:

The term "settlement" as used in this Act shall include any Act of Parliament, will, deed, or other assurance or connected set of assurances whereby particular estates or particular interests in land are created, with remainders or interests expectant thereon; and every estate and interest created by appointment made in exercise of any power contained in any settlement or derived from any settlement shall be considered as having been created by the same settlement; and an estate or interest by way of resulting use or trust to or for the settlor, or his heirs, executors, or administrators, shall be deemed to be an estate or interest under the same settlement.

The term "landlord" in relation to a holding shall include a superior mesne or immediate landlord, or any person for the time being entitled to receive the rents and profits or to take possession of any holding:

The term "tenant" in relation to a holding shall mean any tenant from year to year, and any tenant for a life or lives or for a term of years under a lease or contract for a lease, whether the interest of such tenant has been acquired by original contract, lawful assignment, devise, bequest, or act and operation of law; and where the tenancy of any person having been a tenant under a tenancy which does not disentitle him to compensation under this Act is determined or expiring, he shall, notwithstanding such determination or expiration, be deemed to be a tenant until the compensation, if any, due to him under this Act has been paid or deposited as in this Act provided:

The term "improvements" shall mean in relation to a holding,—

(1.) Any work which being executed adds to the letting value of the holding on which it is executed, and is suitable to such holding; also,

(2.) Tillages, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding.

Agricultural or pastoral holdings only subject to this Act.

71. This Act shall not apply to any holding which is not agricultural or pastoral in its character, or partly agricultural and partly pastoral; and the term "holding" shall include all land of the above character held by the same tenant of the same landlord for the same term and under the same contract of tenancy.

Short title.

72. This Act may be cited for all purposes as "The Landlord and Tenant (Ireland) Act, 1870."

Application of Act.

73. This Act shall apply to Ireland only.

Note on the mode of granting receipts and keeping accounts by landlords as affected by the Act.

Under section 53, if the tenant has executed a kubulyut, rents will be due from him according to the instalments therein mentioned.

If there be no kubulyut, but established usage which regulates the instalments according to which rents are paid in the estate, they will be payable according to such usage.

If there be neither kubulyut nor established usage, then the rents will be payable in four quarterly instalments of the agricultural year, *i. e.* in Bengal, one fourth on the last day of *Asar*, one-fourth on the last day of *Assin*, one-fourth on the last day of *Poush*, and one-fourth on the last day of *Chytra*.

In Behar the agricultural year commences in *Asar*, and the last days of every quarter commencing from the first of *Asar* will be the days on which rents are due. In all cases interest under section 67 will have to be calculated only from *expiration of every quarter, any stipulation in kubulyts or any usage to the contrary notwithstanding*. For example, supposing the yearly rent of A., a tenant, is Rs. 100, and he does not pay it during the year, his accounts in the landlord's office will stand thus:—

In Bengal due on 30th Asar	...	Rs.	25
Interest from 1st to 30th Sraban at 12 per cent. ...	...	As.	4
Ditto from 1st to 30th Bhadro	...	„	4

and so on; the necessary changes will have to be made for Behar.

The particulars to be inserted in the receipt to be granted to a tenant are:—

1. Serial number of the receipt.

This requires no explanation.

2. "Estate" means the particular lot or mehal in which the holding is situate, not the pargana or the kismut of which it may form a part; thus, if Pargana Sultanabad be a large estate, and B takes a patni of two villages in it, calling them Lot X, Lot X will have to be mentioned in the receipt.

"Village."
"Thana."
"Tenant's name" } require no explanation.
"Particulars of 'holding'

"*Nukdi*" means rent paid in cash as contradistinguished from *Bawlie* which means rent in kind.

In Bengal rent is generally paid in cash, therefore, where such is the case, nothing is to be inserted after "Bawlie."

After the words "nukdi——" is to be inserted, the quantity of land held by the tenant, and the yearly rent.

(4.) Where the exact area comprised in the tenant's holding is not known, it is advisable not to state it, and the landlord, under sub-section 3, section 56, is required to insert only such particulars as he "can specify at the time of payment"

besides Julkur, Bunkur, Phulkur, the tenant may have to pay rent of other kinds, such for instance as grazing dues, stall rent in markets, rent (or the right of plying ferry and landing passengers on the landlords' land, etc., in all such cases each kind of rent is to be specified in the receipt, all payments of rent *during the year* are to be entered on the back of the same receipt according to the form headed "details of payment."

In the column headed "arrear on account of year—. kist———" to be entered the sum due after every quarter with interest, or the column may be sub-divided, one sub-divison shewing principal rent due and another interest.

There will be a single receipt for the whole year, and each payment is to be entered on the back so that the tenant will have to bring or send his receipt everytime he makes a payment.

Under the former system the Gomasta or Naib used to sign receipts, but according to the provisions of section 56 sub-section (1) the receipt is to be "signed by the landlord;" under sub-section 3, section 187 however an "authorized agent" may sign, a Gomasta or Tesildar may sign if duly empowered by written authority.

Such written authority need not necessarily be registered, but it will be advisible to register it, and a tenant may object to pay unless he is satisfied that a Gomasta or Naib or Tesildar is "duly authorized."

The landlord, however, may impress his seal on receipts when sending them out to his agents, and sealing will be equivalent to signing under sub-section (14) section. (3)

The above observations and the forms of receipts and accounts apply to transactions with raiyats and not holders of intermediate tenures.